THE INDEPENDENT TELECOMMUNICATIONS CONSUMER ENHANCEMENT ACT OF 2000

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION

OF THE

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

H.R. 3850

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THURSDAY, JULY 20, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:15 p.m., in room 2322, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman), presiding.

Members present: Representatives Tauzin, Oxley, Gillmor, Deal, Largent, Cubin, Shimkus, Markey, Gordon, Eshoo, Luther, and Sawyer.

Staff present: Kelly Zerzan, majority counsel; Cliff Riccio, legislative analyst; and Andy Levin, minority counsel.

Mr. TAUZIN. The Chair apologizes. The meeting will come to order.

Welcome to today's legislative hearing on H.R. 3850, the Independent Telecommunications Consumer Enhancement Act of 2000, which has been introduced by my colleague, Congressman Cubin—Congresswoman Cubin, excuse me, 4 years ago.

After our struggle to pass the Telcom Act, it is clear that our efforts have indeed paid off. We are truly in a new and changed telecom environment. The industry has seen an explosion of new entrants, new participants, and increased competition.

In fact, we have some mid-sized carriers here today who will surely tell us that competition is so vibrant that many FCC regulations are no longer necessary to protect the consumer.

I, as one, believe that some of the FCC regulations are too burdensome particularly for mid-sized carriers. For instance, I understand that mid-sized carriers must complete voluminous reports which cost them hundreds of thousands of dollars when the usefulness of such reports is easily debatable. A Paper Reduction Act here may be indeed a good measure.

However, whether competition in the areas served by mid-sized carriers is so robust as to warrant the reduction of FCC oversight, indeed we ought to talk about that and that is why we are here today.

The central debate of this bill is an old one, and frankly one that has always been difficult to answer. At what point is the marketplace strong enough to replace the government regulator?

I hope to hear some of the answers to that question today.

I want to thank Representative Cubin for introducing the important issue to this subcommittee, and we indeed look forward to hearing the witnesses that have assembled today.

Again, my apologies for starting a little late, Barbara, and to all of you who have gathered to be with us today.

The Chair will yield to my friend from Ohio, Mr. Sawyer, for an opening statement.

Mr. SAWYER. Thank you, Mr. Chairman.

There is some water there for you, if you need it.

Mr. TAUZIN. Thank you, sir.

Mr. SAWYER. I have a longer statement, but just let me summarize it by saying that it is rare that one size fits all, except maybe for Spandex.

Mrs. CUBIN. And even not then.

Mr. SAWYER. I really do not have much first-hand experience, so having said that, it is currently being argued that some of our telephone companies are burdened by an ill-fitting regulatory regime, and we are here today to talk about whether or not a more tailored regulatory treatment would be appropriate.

I look forward to hearing everybody's comments on that question. I yield back.

Mr. MARKEY. It is rare that one size really fits all. Except, of course, for Spandex. And certainly for telecommunications regulations one policy should not fit all. However, this is sometimes the case for local exchange telecommunications carriers. Companies with vast differences in number of customers and in size of revenues too often play by the same rules. FCC regulations that apply to the large Regional Bell Operating Companies sometimes must be followed by smaller mid-sized carriers. These regulations are disproportionately burdensome and often unnecessary for these carriers.

For example, mid-sized carriers assert that the cost allocation manual [CAM] reporting requirements costs them up to $3 per customer while it costs Regional Bells just 4 cents per customer. Proponents of this legislation also point out the FCC rarely uses these reports from mid-sized carriers.

H.R. 3850, the Independent Telecommunications Consumer Enhancement Act of 2000 addresses this problem by creating a separate class for incumbent local exchange carriers [ILEC] that have less than 2 percent of the Nation's subscriber lines, and by directing the FCC to adopt regulations that account for their limited resources. Although 2 percent carriers would still be subject to FCC regulations, the bill's intent is to ensure that any regulation must be reasonable for mid-sized carriers.

In addition to modifying costly and unnecessary reporting requirements, H.R. 3850 would also allow 2 percent companies to integrate its telecommunications operations. As a result, these companies could offer additional services such as wireless or broadband without setting up separate subsidiaries. While large Regional Bells can afford the additional costs associated with creating a subsidiary, these costs can be prohibitive for smaller carriers. Lifting this burden should spur 2 percent companies to offer a full range of services, bringing additional competition to the ILEC market.

Congress has already recognized the unique needs of 2 percent carriers by requiring less burdensome interconnection requirements in the 1996 Telecom Act. More recently, the FCC eliminated rules which are disproportionately costly for these 2 percent carriers. However, additional unnecessary regulations still remain. By removing these barriers, 2 percent carriers can use those resources to roll out additional services or invest in their infrastructure.

Those who oppose lifting or modifying the regulations claim that this bill severely weakens the FCC's ability to protect consumers. I understand that the FCC is concerned that it lacks the resources to carry out some of the provisions of this bill. While I appreciate that the FCC may be troubled by some of the oversight issues, I believe that currently the mid-sized telephone companies are burdened by an ill-fitting regulatory regime and deserve tailored regulatory treatment.

I look forward to vetting these issues with the FCC today and trying to find a balanced approach to ensuring fair competition.

Mr. TAUZIN. Thank you, sir.

I will now yield to the author of the legislation for her statement, Congresswoman Cubin.

Mrs. CUBIN. Thank you, Mr. Chairman.

I also thank you for holding this hearing. It really is important to rural areas like mine, especially.

H.R. 3850 is legislation that will modify regulatory burdens on small and mid-sized telephone companies, allowing them to shift more of their resources to deploying advanced telecommunications services to consumers in all areas of the country.

Small and mid-sized companies really are truly that. While the more than 1200 small and mid-sized companies serve less than 10 percent of the Nation's lines, they cover a much larger percentage of rural markets and they are located in or near most major markets in the country.

Some of these telephone companies are mom and pop operations, typically serving rural areas of the country where most other carriers fear to tread, in high-cost places where it is much less profitable than in more populated areas.

In 1996 this committee wrote, and the Congress passed, historic legislation in the form of the Telecommunications Act.

Section 706 of the Act sent a clear message to the American people and to the Federal Communications Commission that the deployment of new telecommunications services in rural areas around the country must happen quickly and without delay.

Unfortunately, the FCC has not made it any easier for small telephone companies to deploy advanced services in rural areas. In some cases they have actually made it more difficult.

The reason is that the FCC, more often than not, uses a one-size-fits-all model in regulating all incumbent local exchange companies.

This type of model may be fine for the big companies that have the ability to hire legions of attorneys and staff to interpret and ensure compliance with the regulations, but the small and mid-sized companies do not have the resources available to them to complete the paperwork requirements put forth in these outmoded and preponderous reports.

These are the instructions, over 900 pages. These are just the instructions for filling out the CAM and ARMIS reports that are required annually.

Now I want to show you another thing. You should have to carry that around. I didn't. Here are CAM and ARMIS reports required annually that have to be filed, and these are by very small and mid-sized companies. These things cost from $300,000 to $500,000 to fill out and, in many cases, are not even reviewed; they are not even looked at.

Now I do not want them to be totally useless. So what I am going to do is sit on it so that I can see you better and you can see me better and know I am the one here in charge. They have to be good for something.

Now I would like to offer one of these—these are other reports. These are not CAM and ARMIS, but these are reports that will have to be filed anyway even if these are not, under my bill. Here they are. Mike, you can have one.

Mr. OXLEY. Thank you.

Mrs. CUBIN. Billy, you can have one. Everyone can have one.

These reports, separately, the CAM and ARMIS again, they cost about $500,000 to compile and would equate to a small company installing a de-slam or other network infrastructure to provide highspeed Internet data access to customers in rural areas.

Just to give you an example of how burdensome these are, I showed you. This is over 900 pages long, and those are the instructions for filling out the reports.

More often than not, the FCC does not refer to, and in some cases simply ignores the data filed by the mid-sized companies.

The bill, however, I want to make this very clear, does absolutely nothing to restrict the Commission's authority to request any of this or all of this at any time. The Commission absolutely retains that authority under my bill.

Nevertheless, the FCC should be commended I believe because they have made efforts to bring some of these reporting requirements down to a reasonable level, and I want to make that very clear, that I acknowledge that and appreciate it.

In fact, it is reported to me that the FCC may be issuing a notice of proposed rulemaking on the agency's reporting requirements for 2 percent companies sometime this fall.

The problem, though, is that the agency's timeframe on issuing these proposed rules has changed like the Wyoming winds. I do not know how many of you have been to Wyoming, but they blow in a circle.

It is time that those obligations are met. This legislation would solidify what the FCC has already promised to do for a long time.

In closing, Mr. Chairman, I want to state for the record what this legislation does and what it does not do. The bill does not reopen the 1996 Act.

It does not fully deregulate 2 percent carriers.

And it does not impact regulations dealing with large local carriers.

It would, however, be the first free-standing legislation that would modernize regulations of 2 percent carriers. It would accelerate competition in many small to mid-sized markets; accelerate the deployment of new advanced telecommunications services; and benefit many consumers by allowing 2 percent carriers to redirect their resources from regulatory burdens to network investment and new services.

Mr. Chairman, I believe this legislation is critical for rural areas such as Wyoming where these small companies operate.

Without this bill, these 2 percent companies will continue to be burdened with this one-size-fits-all regulatory approach that has kept them from providing rural areas with the services they need in order to have a share of the new economy.

Again, Mr. Chairman, I truly thank you for having this hearing today, the other members for being here, and I look forward to hearing from the witnesses.

Mr. TAUZIN. I thank the gentlelady.

The Chair recognizes the ranking minority member, my friend from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

There are a number of issues raised by legislative proposals before the committee, including whether there is sufficient competition in identified markets to warrant elimination of certain ratepayer protections, whether certain regulations have outlived their usefulness, whether provisions are targeted to affect truly small companies or rural markets; and whether elimination of reporting requirements will increase rates or cause universal service subsidies to become even more bloated.

The FCC has already taken many steps to relieve regulatory burdens on so-called 2 percent companies and the FCC is poised to consider even more relief.

In my view, removing regulations after markets have become fully competitive makes imminent sense, yet the bill before the committee not only removes arguably unnecessary regulatory requirements—which I would support—but also removes certain requirements that help to make smaller markets more competitive.

In addition, the legislation contains a number of provisions that may have adverse implications for consumer rates.

The legislation appears to eliminate the ability of the FCC to review interstate access rates for reasonableness once competition arrives in a 2-percent company's market.

The problem here is that competition may arrive that, while providing competition in certain markets, may not provide competition for certain types of access rates such as terminating access charges.

This could leave interconnecting companies with no means to challenge such rates, thus forcing them to charge higher rates elsewhere to compensate them.

If rural Americans want to inhibit the growth of competition in their rural markets or put rural consumers at risk of rate increases, that is one thing, and that is their prerogative to advocate such positions and to take such risks.

I believe we would do better by rural Americans to revise the legislation to keep in place those provisions that foster competition while focusing solely on those provisions that are unnecessary to the promotion of competition or to consumer protection.

With respect to rates that affect urban consumers, however, I do not support putting urban consumers at the risk of increased subsidies simply because rural companies seek relief from competitive provisions and requirements.

I support universal service. I do not want to see people in North Dakota, or Alaska, or Wyoming, or any rural community pay $240 a month for local phone service.

I believe rural consumers should pay reasonable rates. I believe it is important for urban ratepayers to help out in this endeavor, which my family has been doing for my entire life in the city of Boston, helping out rural Americans.

Mrs. CUBIN. Thank you.

Mr. MARKEY. And we like doing it. We like you people. You are good people.

Mrs. CUBIN. And we think the same of you.

Mr. TAUZIN. And the cows will come home when you call them. You know that.

Mr. MARKEY. But I'm an Easterner. What do I know? What do I know about cows, you know?

My father delivered the milk; we didn't milk it.

That's an udder story. I believe it is important for urban ratepayers to help out in this endeavor.

Mr. TAUZIN. Keep milking it——

Mr. MARKEY. I don't believe—keep milking it—I don't believe, however, it is fair to ask urban consumers to pay $24 a month for phone service so that rural Americans can pay $16.

Mrs. CUBIN. I agree.

Mr. MARKEY. That doesn't sound right—there you go. We're going to write the bill right now.

And permit rural telephone companies to build moats around their phone networks which isolate them from competitive practices.

I continue to believe that the current universal service system is in dire need to revamping because it is bloated to the tune of billions of dollars.

Competition can help bring down subsidy costs and we should try to drive competition as far out into rural America as possibly we can, and I hope that would be our goal.

Having said that, there are certain areas again where we can and should relieve regulatory burdens. I look forward to hearing from the FCC so that we can do more work, and I hope at some point we can hear from the State regulators and state consumer councils so that we can have their perspective as well.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Markey. I suspect 1 day Mrs. Cubin will cow you into an agreement.

We will now hear from the vice chairman of the committee, Mr. Oxley, from Ohio.

Mr. OXLEY. Thank you, Mr. Chairman, and I am moo'vd by the generosity of the gentleman from Massachusetts.

Mr. TAUZIN. You are "moo'vd" by it?

Mr. OXLEY. Moo'vd, yes.

We want to try to make this a pun-free zone at least for the next hour or so.

Mr. TAUZIN. I am un udder amazement over here.

Mr. OXLEY. There you go again.

Let me welcome Mr. Jack Mueller, president of what used to be Cincinnati Bell and is now Cincinnati Telephone/Broadwing. We are glad to have you here.

Mr. MUELLER. Thank you.

Mr. OXLEY. I am a proud co-sponsor of this legislation with Mrs. Cubin. Clearly relief is necessary for many of these small and mid-sized companies.

I am particularly interested in the testimony from the FCC and the Common Carrier Bureau because I will give credit to the FCC for taking some action in several areas in reducing auditing requirements for mid-sized carriers and the like, and was also pleased to have them indicate that they are preparing to recommend further regulatory reductions for mid-sized carriers.

I know that the FCC does have some issues with this legislation, but that is really what a hearing is all about. But clearly from my discussions with some of my constituent companies and others throughout the country there is a crying need for some common sense regulatory relief here as it relates to the incredible paperwork that the gentlelady from Wyoming so graphically brought before us.

For that reason I think it is very important that this hearing be held, and for that I thank the chairman and I yield back.

Mr. TAUZIN. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Tennessee, Mr. Borden—Gorden.

Mr. GORDON. Thank you——

Mr. TAUZIN. Just another pun. You missed it.

Mr. GORDON. [continuing] Mr. Chairman.

Mr. TAUZIN. Mr. Gordon.

Mr. GORDON. All of us are worrying about the growing imbalance between the urban and rural America's access to advanced telecommunications services.

My home State of Tennessee is a good example of the effects of the so-called Digital Divide. Tennessee currently ranks 43rd in households with Internet access.

While broadband is coming to larger cities such as Nashville, it is not coming to the smaller cities and rural areas of middle Tennessee any time soon.

In fact, households in rural areas are half as likely as those in urban areas to have Internet access. Mrs. Cubin and I have realized that most people have overlooked one of the chief assets we have in closing the Digital Divide. That is, the 1200-plus independent communications companies across America.

These are the small and mid-sized companies that have less than 2 percent of the Nation's access lines. Two percent companies are ideally positioned to close the Digital Divide because they already serve small cities and rural areas.

They have a track record of providing Long Distance service, Highspeed Data, and other advanced services to these smaller markets. But they are being held back by this one-size-fits-all FCC regulation.

Small and mid-sized telephone companies spend a lot of resources dealing with ill-suited regulations that were originally written for the big Bell Companies.

As Mrs. Cubin pointed out earlier, the FCC requires mid-sized companies to file both ARMIS and CAM reports on an annual basis. Collecting this data costs mid-sized companies $300,000 to $500,000 a report on the average, yet the FCC we understand rarely ever looks at this information.

Two percent companies are also required to maintain Separate Affiliates for Long Distance and Wireless services. Ironically, the 1996 Act sunsets the Separate Affiliates provision for the Bell Companies 3 years after entry into the Long Distance market, while 2 percent companies who have always been able to offer Long Distance services are prohibited from integrating these services.

Other complaints include petitions, waivers, and merger reviews that sometimes languish for years at the Commission without a decision because the focus is on the larger companies and the 271 proceedings.

Ultimately these regulatory costs are passed on to customers. One company estimates it spends $25 per customer complying with Federal regulations alone. This time and money could better be spent on bringing the Digital Divide in our Nation to the rural areas.

Reducing the regulatory burden placed on America's independent telephone companies will free up these small companies to spend more of their resources deploying advanced competitive services and less time filing paperwork in Federal regulations.

H.R. 3850 represents a small, practical step Congress can take to close the Digital Divide in rural areas.

Once again I want to state my understanding that the Commission is working on some of these issues, and I applaud their efforts, and hopefully this legislation was something of a prod that helped bring this forward.

I look forward to hearing this panel's comments.

Thank you.

Mr. TAUZIN. I thank my friend.

The Chair will now yield to the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman, for having this hearing, to the witnesses who are here, and certainly to the gentlewoman from Wyoming who is a good friend for her good work on this.

The legislation we are considering today addresses a segment of the telecommunications industry that, because of its size, is hindered from making advances in service and technology.

While the goal of the legislation is something that, the intent is something that I generally support, I think we need to take a close look at what it means if in fact it is enacted.

I think that there seems to be a consensus that some regulations on carriers may place inequitable burdens on smaller carriers. If true, then a careful examination is appropriate both of the means this legislation takes to alleviate the burdens as well as the measures that are already underway at the FCC which may reach the same end without Congressional intervention.

I certainly hope that happens. I know that two of my colleagues—maybe more—but two that I paid close attention to have already mentioned this.

As always, I think that we need to be wary of unintended consequences. Do we re-regulate only to find that we have shifted the burdens elsewhere?

I usually describe that as putting the punch in a pillow and thinking we put a dent in something and then something else pops up as a result of it.

Does the elimination of some of the reporting requirements deprive the FCC, or the Congress for that matter, of information necessary to the evaluation of the Telecom Act's effectiveness?

If we relax rate regulations for 2 percent carriers, will we be faced with me-too arguments from another segment of the industry in the very near future?

As I am saying this out loud I am thinking, well, maybe that is what Members of Congress are supposed to do, be referees in all of this. But I still think it is important to pose the questions.

Also, will mergers that would otherwise not have been approved be completed simply because they were not acted upon within the 45-day period established by the legislation?

And on a more practical level, if we demand that the FCC act faster on merger applications involving these carriers, are we able or prepared to provide them with the resources and the manpower to do so?

So I think that these are all important questions which I hope we are going to answer and begin to address today in this hearing.

And I thank you again, Mr. Chairman, for having the hearing and for my good friend, Barbara Cubin, for bringing this forward.

I yield back.

Mr. TAUZIN. I thank the gentlelady.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Mr. Chairman, thank you for holding this legislative hearing on H.R. 3850, the Independent Telecommunications Consumer Enhancement Act of 2000.

As my colleagues well know, I have fought long and hard for competition. The cornerstone of the 1996 Act was to bringcompetition to local telephone markets. This Committee carefullydrafted those provisions to make certain that consumers would have the same choice and innovation in local services that they had in all other telecom markets.

In order to foster competition, we decided to exercise some influence over the incumbent carriers to ensure that all Americans would have access to low rates and quality service. These efforts were, in fact, successful. I do not intend to support any action that reverses this course.

However, while regulation is designed to replicate a competitive marketplace, regulation is still an imperfect surrogate for full-fledged competition. As competition continues to grow in the provision of telephone service, the need for government intervention decreases.

Whether competition is robust enough to discontinue regulation for certain carriers, in this case the 2% or mid-size carriers, is something we are here to learn. This legislation is a good starting point for this Committee to debate this important issue.

I look forward to learning more about the bill before us today. As always, I remain interested in finding ways to benefit the consumer by encouraging strong and healthy competition.

I thank today's witnesses in advance for their thoughtful testimony and I thank Mr. Tauzin for holding this hearing this morning. I yield back the balance of my time.

Mr. TAUZIN. The Chair is now pleased to welcome our first panel. By unanimous consent, all members' written statements are made a part of the record, as well as are the written statements of our panel, without objection.

In saying that, let me remind you that we operate under the 5-minute rule. We have little timers in front of you, and as we put them on we will ask you to watch them carefully. When the yellow comes on, try to wrap up for us.

To do that, you probably have to summarize, not read to us. So if you can, summarize your points and we will get into Q&A as quickly as we can.

Let me introduce the panel, first:

Ms. Carol Mattey, the Deputy Chief, Common Carrier Bureau of the Federal Communications Commission. She is accompanied today by Mr. James Bird, the Senior Counsel of the Office of General Counsel. We want to welcome you both and thank you for coming.

Next is Mr. Larry Darby, Economist and, by the way, Chinese chef extraordinare.

And who also, coincidentally, married far above himself. Darby Associates, Communications Consultants.

His wife is a darling—here in Washington, DC.

Mr. Jack Mueller, the President of Cincinnati Telephone Company, who was introduced by my friend Mr. Oxley. Welcome, Mr. Mueller.

Mr. MUELLER. Thank you.

Mr. TAUZIN. Mr. David Cole, the Vice President of Operations Support for Century Tel, Monroe, Louisiana. Wonderful State, I might add.

Mr. COLE. Thank you.

Mr. TAUZIN. Who also enjoys universal service support.

And Mr. John Sumpter, the Vice President of Regulatory Affairs at Pac-West Telecommunications, Incorporated, of Stockton, California. Indeed a very renowned panel of experts who can tell us a little bit about whether all that paperwork is necessary and what is happening at the FCC to take it down.

So we will start with the FCC and Ms. Carol Mattey. Your 5 minutes are on. Welcome, Ms. Mattey.

STATEMENTS OF CAROL E. MATTEY, DEPUTY CHIEF, COMMON CARRIER BUREAU; ACCOMPANIED BY JAMES BIRD, SENIOR COUNSEL, OFFICE OF GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION; LARRY F. DARBY, ECONOMIST, DARBY ASSOCIATES; JACK MUELLER, PRESIDENT, CINCINNATI TELEPHONE COMPANY/BROADWING; DAVID COLE, VICE PRESIDENT OF OPERATIONS SUPPORT, CENTURYTEL; AND JOHN SUMPTER, VICE PRESIDENT, REGULATORY AFFAIRS, PAC-WEST TELECOMMUNICATIONS, INC.

Ms. MATTEY. Good morning, Chairman Tauzin, and members of the subcommittee: Thank you for this opportunity to appear today to discuss H.R. 3850, the Independent Telecommunications Consumer Enhancement Act of 2000.

This legislation is directed at reducing the burdens of regulation on those local exchange carriers with less than 2 percent of subscriber lines, which includes all local companies in the country with the exception of the Regional Bell Companies and SPRINT.

I am appearing today on behalf of the Common Carrier Bureau and, as noted, with me today is James Bird from the Office of General Counsel who can answer specific questions relating to the merger aspects of the bill.

I would like to begin by expressing the Bureau's strong support for the overall goal of this legislation. The Bureau agrees that it is necessary to remain sensitive to the impact of regulation on smaller carriers and lighten those regulations where appropriate.

With that in mind, the FCC has already taken significant steps to reduce regulatory burdens on the smaller carriers, and the FCC will be considering additional measures in the future.

At the same time, the Bureau believes that the regulation of common carriers in some areas advances significant goals of the Communications Act.

The Bureau believes that H.R. 3850 as drafted raises a number of questions that should be explored further to consider the possibility of unintended consequences.

I would like to highlight several examples discussed more fully in my written testimony.

In some areas it is critical that we gather information from all carriers and not just the RBOCs. For example, Section 706 requires the FCC to consider whether advanced telecommunications capabilities are being deployed on a reasonable and timely basis.

Smaller carriers are playing a large role in the deployment of broadband. Our ability to monitor what is happening across America and report to Congress on broadband deployment would be greatly hindered if the Commission were precluded from gathering the same information from all carriers.

Likewise, there are certain goals of the Act, such as the protection of consumers, that should apply equally to all carriers. Section 281 of the draft legislation could be interpreted as requiring the FCC to reduce the obligations of 2 percent carriers to comply with the Commission's Truth In Billing and Slamming Rules.

The Bureau feels strongly that consumers in Golden Meadow, Louisiana, should receive bills that are easy to understand and should be protected against unauthorized changes in their provider just like consumers in New York or California.

Mr. TAUZIN. How do you know where Golden Meadow, Louisiana, is?

Ms. MATTEY. I don't know precisely, but I have to tell you my mother lives in Louisiana, so I will have to ask her where it is.

Anyway—she lives in Shreveport—I also would like to point out——

Mr. TAUZIN. That's Yankee country compared——that's way up there.

Ms. MATTEY. Okay, okay. Well, whatever.

I also would like to point out that certain of the timing aspects of the legislation may be problematic.

For example, the requirement that decisions on mergers be made within 45 days or be deemed granted is hard to reconcile with Section 309(d)'s requirement that the Commission provide parties with a minimum of 30 days from the time of public notice of the application to file petitions to deny.

The requirement that all petitions for reconsideration filed by 2 percent carriers be resolved in 90 days would be difficult to implement, particularly in light of the Administrative Procedures Act requirement that we seek comment and consider such comments thoroughly before acting on such petitions.

Finally, it may be difficult for the Bureau to meet these statutory deadlines while meeting other statutory deadlines such as acting on Section 271 applications.

To conclude, the Bureau supports the goal of reducing regulatory burdens for carriers with less than 2 percent of the Nation's subscriber lines, and we would like to work with you as you consider this legislation further.

Thank you for this opportunity to testify. I would be happy to answer any questions you have.

[The prepared statement of Carol E. Mattey follows:]

PREPARED STATEMENT OF CAROL E. MATTEY, DEPUTY CHIEF, COMMON CARRIER BUREAU, FEDERAL COMMUNICATIONS COMMISSION

Good morning Chairman Tauzin, and members of the Subcommittee. Thank you for the opportunity to appear before you today to testify regarding H.R. 3850, the "Independent Telecommunications Consumer Enhancement Act of 2000." This legislation is directed at reducing the burdens of regulation on those local exchange carriers with fewer than 2% of the nation's subscriber lines, which includes all local companies in the country with the exception of the Regional Bell Operating companies and Sprint. I am appearing today on behalf of the Common Carrier Bureau (Bureau) of the Federal Communications Commission (FCC). With me today is James Bird, Senior Counsel in the Commission's Office of General Counsel.

I would like to begin by expressing the Bureau's strong support for the overall goal of this legislation. The Bureau agrees that it is necessary to remain sensitive to the impact of regulation on smaller carriers and lighten such regulatory burdens where appropriate. With that in mind, the FCC has already taken significant steps to reduce regulatory burdens on smaller carriers in a number of areas, and the FCC will be considering additional measures in the future. At the same time, the Bureau believes that regulation of smaller carriers in some areas advances significant goals of the Communications Act (Act). The Bureau believes H.R. 3850, as drafted, raises a number of questions that should be explored further to consider the possibility of unintended consequences. The Bureau would like to work with you as you consider this legislation.

Actions the FCC Has Taken:

Accounting and Reporting Requirements: The vast majority of 2% carriers—1300 carriers nationwide—are not subject to the FCC's Automated Reporting Management Information System (ARMIS) reporting or cost allocation manual (CAM) filing requirements today. Rather, these requirements currently apply to only those companies with more than $114 million in revenue, the so-called mid-size carriers. In several recent proceedings, the FCC has recognized that mid-sized carriers have different regulatory needs than their larger counterparts. For example in May of 1999, the FCC released *ARMIS Reductions Report and Order,* which eliminated several ARMIS filing requirements for mid-sized carriers. The FCC noted that staff analysis and usage of the data provided in the ARMIS tables had mostly been limited to the largest carriers because they have the greatest opportunities and incentives for shifting costs between services. Similarly, in the May 1999 *Accounting Reductions Report and Order,* the FCC allowed mid-sized carriers to account at a reduced level of accounts and to submit a streamlined CAM. We also reduced their auditing requirement from once a year to once every two years.

Numbering Administration Reporting: In the FCC's recently adopted *Numbering Resource Optimization Order,* the Commission adopted rules to more efficiently allocate and monitor the use of the nation's telecommunications numbering resources. After consideration of the burdens that such monitoring would place on small carriers, the FCC adopted rules that imposed a lesser reporting obligation on rural carriers. The FCC also gave states the authority to further reduce the burden on small carriers at their discretion.

Truth in Billing: In it's *Truth-in-Billing* proceeding, the FCC adopted various rules to make telephone bills more understandable for consumers. In implementing those rules, the FCC has taken the needs of smaller carriers into account. For example, a number of smaller carriers requested, and received, additional time to come into compliance with the Commission's truth-in-billing requirements because they had computer programming concerns arising out of preparations for Y2K.

Regulatory Reductions Under Consideration:

Accounting and Reporting Requirements: The FCC continues to work towards even more streamlined accounting requirements for all carriers. To that end, the Bureau has held public meetings in preparation for initiation of the second phase of its wholesale accounting reform proceeding. Representatives from mid-size companies were in attendance at all five meetings held in April and May of this year, and one of those meetings was specifically designated to address issues of concern to mid-size carriers. In the near future, the Bureau plans to recommend to the Commission that it start a rulemaking to consider more significant reductions in accounting requirements for mid-sized carriers. Moreover, the Bureau believes the Commission should consider raising the indexed revenue threshold so that fewer carriers would be subject to these requirements in the first place.

Potential Unintended Consequences

In a number of areas, the Bureau has questions about the breadth and intent of the legislation as drafted.

Section 281/Reporting to Congress: One provision in the bill, section 281, could potentially impact the FCC's ability to monitor the extent of broadband deployment in the United States. This year, the FCC launched a formal data collection program to gather standardized information from all providers of advanced telecommunications capability to enable the FCC to report to Congress on whether advanced telecommunications capability is being deployed on a reasonable and timely basis as required by section 706 of the Act. In particular, any carrier (whether wireline, wireless, cable, or satellite provider) with more than 250 broadband customers in a state is required to report such data to the FCC on a semi-annual basis. If section 281 of the legislation is read as requiring the FCC to adopt a less burdensome reporting requirement, or waive this requirement, for the 2% carriers—the FCC only would receive information about the BOCs and Sprint, which would leave large gaps in knowledge about the extent of broadband deployment by wireline carriers. This is an example of an area where, because smaller carriers are playing a large role in the deployment of advanced telecommunications capability, it is important for the FCC to collect the same information from all carriers, both large and small. Such information is necessary for the FCC to make an accurate assessment for its report to Congress.

Consumer Protection: The FCC promulgates rules that are directed at protecting consumers. These rules establish the minimum protections to which consumers are entitled. Most recently, the FCC has acted to prevent unauthorized changes in telephone carriers—known as slamming—and to require that telephone bills be understandable. For example, the Commission's Truth-in-Billing rules require that carriers highlight changes in service or service providers on customer bills so that consumers can more easily see whether an unauthorized change has occurred. Section 281 of the legislation could be interpreted as requiring the FCC to lift such requirements for smaller carriers. Consumers in Golden Meadow, Louisiana should receive easy to understand bills, just like consumers in New York or Los Angeles. H.R. 3850, by virtue of how broadly it is drafted, may have the unintended consequences of limiting the protections to which the customers of the 2% carriers are entitled.

Universal Service: The proposed legislation raises two additional questions regarding the Commission's ability to satisfy its statutory duty to preserve and advance universal service. First, section 282's elimination of the ARMIS requirements for 2% carriers may affect the Commission's ability to collect sufficient cost data for its high-cost support mechanisms. Because ARMIS data filed by mid-size and larger carriers is used in the Commission's new high-cost support mechanism for non-rural carriers, the absence of data for a particular class of carriers could unintentionally affect the support amounts provided to all carriers.

Second, section 283 would prohibit the Commission from requiring 2% carriers to have separate books of account for different operations. However, section 254(k) prohibits carriers from using non-competitive services to subsidize competitive services. It also directs the Commission to establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of the facilities used to provide those services. We must make sure that the Commission still has the tools it needs to enforce section 254(k).

Pricing Flexibility: While the goal of this legislation is clearly to encourage competition in areas served by 2% carriers, granting pricing flexibility based on the existence of a single competitor in that carrier's service territory—as required under section 287 of the legislation as drafted—may unintentionally have the opposite effect. It is important to consider that even 2% carriers may have market power within their service area. While these carriers provide service to only 10% of the nation's subscriber lines, they often cover expansive geographical regions, particularly in western states.[1] Competitive entry in one part of a 2% carrier's service area, particularly by a reseller, may not be relevant to whether there is sufficient competition in the area to warrant pricing flexibility. If such carriers are entitled to pricing flexibility prior to the existence of competition, this could have the unintended effect of reducing the likelihood of competition ever arriving in much of their service area. In addition, a grant of pricing flexibility to rate-of-return carriers without the implementation of protections comparable to those adopted by the FCC with regard to price cap carriers could be particularly problematic. Rate-of-return regulation would allow such carriers to raise rates on other customers sufficiently to maintain the authorized level of return while they lower prices for contract customers.

Rate Regulation: As noted above, even 2% carriers have market power within their service areas. As drafted, the legislation states that the FCC would have no authority to regulate rates for interstate services of a 2% carrier after another carrier has engaged in facilities based entry within the 2% carrier's service area. This legislation could have the effect of making the rates of 2% carriers subject to even less regulation than the rates of long distance carriers and competitive local exchange carriers. Under FCC rules, all common carriers, including long distance carriers and competitive local exchange carriers, are still subject to sections 201-205 and 208, so complaints can be filed alleging that the rates charged by such carriers are unreasonable. An unintended consequence of the legislation as drafted could be to exempt the 2% carriers from this minimal oversight. Without such oversight, a 2% carrier could lower its retail rates sufficiently to compete vigorously with the encroaching carrier and make up a portion of the difference by raising its terminating access rates. If such rates are not governed by sections 201-205 and 208, this will leave the long distance carriers that pay those terminating access rate with no means to challenge the reasonableness of such rates. As only one local exchange carrier serves each line to which a call is terminated, the existence of facilities based competition in a particular service area does not provide competition to constrain terminating access rates.

Mergers: The FCC reviews applications to transfer telecommunications licenses or authorizations associated with mergers under sections 214 and 310 of the Act and must determine whether the requested transfers serve the public interest. The Commission has identified four factors in its public interest analysis: Would the proposed transaction result in a violation of the Communications Act? Would it result in a violation of the Commission's rules? Would it substantially frustrate or impair the Commission's enforcement of the Communication's Act or interfere with the objectives of that Act? And whether the transaction promises to yield affirmative public interest benefits.

Reviews of transfer applications are public proceedings, and the Communications Act and the Commission's regulations provide 30 days after public notice for the public to file comments and/or petitions to deny the applications, and the applicant is normally allowed a shorter time to reply. The Commission must consider any comments or petitions and issue a written decision addressing them. The Commission may not deny an application to transfer a license subject to section 310(d) without holding an evidentiary hearing.

The proposed legislation has two provisions relating to mergers of 2% carriers. First, it would add a new subsection (f) to section 310 of the Act to place a time limit of 45 days, from the date an application is submitted, for the Commission to act on transfer applications under section 310(d) related to mergers between 2% carriers or their affiliates. This provision raises several questions. Forty-five days is a short time, particularly since section 309(d) allows the public a minimum of 30 days from public notice to file petitions to deny applications under section 310, and the applicants are normally given at least 15 days to respond to such petitions. In addition, it takes several days to put an application on public notice. Thus, the forty-five day period would likely expire even before the applicant had had a chance to respond to any petition to deny, much less provide time for the Commission to consider the issues raised by the parties and prepare a written decision. Furthermore, the FCC cannot deny applications under section 310 without holding an evidentiary

[1] We have attached a map that plots the territory served by incumbent local exchange carriers that own less than 2% of the U.S. access lines.

hearing, which would take far longer than 45 days, yet the legislation provides that any application not acted on in 45 days will be deemed approved. Finally, it is not clear how a court would review an appeal of such a default approval—i.e., whether the legislation would in such cases effectively replace the FCC review with a more burdensome and lengthy court review.

The second provision addressing mergers of 2% carriers is proposed section 285, which would remove any FCC authority "to approve, disapprove, delay, condition, or modify the terms of any merger" between 2% carriers or their affiliates if the resulting entity is still a 2% carrier, "[e]xcept as required by section 310(f)" This provision could be interpreted in several different ways and could have unintended consequences. For example, it might be interpreted to insulate from any review "terms" of a merger that violate either the Communications Act or FCC rules that are otherwise applicable. The proposed section 310(f) itself merely imposes a time limit, rather than a standard for review, and there is no reference to section 214, which may be at least as relevant to these mergers as section 310.

Implementation Difficulties

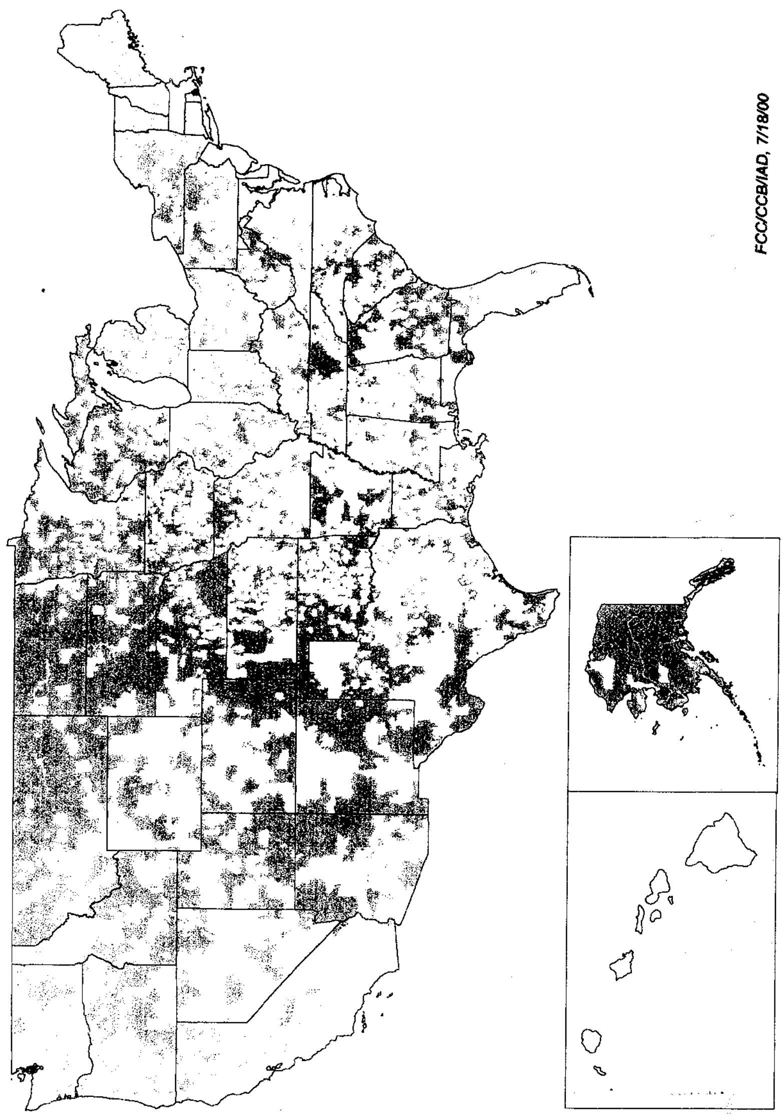
Other timing requirements of the legislation as drafted may prove difficult to implement or have unintended consequences. The requirement that all petitions for reconsideration filed by 2% carriers be resolved in 90 days would be difficult to implement, particularly in light of the Administrative Procedures Act requirement that we seek comment and consider such comments thoroughly prior to resolution of such petitions in rulemaking dockets. Moreover, given current FCC staffing levels, it may be difficult to meet such a requirement while also meeting other statutory deadlines, such as acting on Bell Company section 271 applications within 90 days. This is of particular concern, given that the Commission anticipates receiving additional section 271 applications in the coming months.

Conclusion

As I stated at the outset, the Bureau supports the goal of reducing regulatory burdens for carriers with less than 2% of the nation's subscriber lines. To this end, the FCC would like to offer to work with you as you consider this legislation.

Thank you again for the opportunity to testify. The Bureau looks forward to working with the Subcommittee as it addresses this important issue. We would be happy to answer any questions you may have.

Incumbent Local Exchange Carriers that own less than 2% of US Access Lines



Mr. TAUZIN. Thank you very much, Ms. Mattey.

Next, Mr. Larry Darby, an economist with Darby and Associates here in DC. Larry?

STATEMENT OF LARRY F. DARBY

Mr. DARBY. Thank you, Mr. Chairman, and members of the subcommittee, for hearing my views this afternoon.

My complete testimony addresses the consumer benefits of beginning seriously to reform or eliminate some of the tens of thousands of rules accumulated during the precompetitive era in telephony and how H.R. 3850 begins to advance that cause.

I want to commend you, Mr. Chairman, and the subcommittee, for your leadership in considering the role of less regulation not more as a means of improving consumer welfare in this country.

The "d" word, "deregulation," is controversial. It evokes more words than thoughts, more fear than faith, and more speculation than analysis.

The mere suggestion that government should forebear extending, and in fact should reduce its presence in governing incumbent telephone companies is seen as revolutionary. Too soon. Like drinking wine before its time.

I have a sense of deja vu this afternoon about this hearing, having testified here nearly 25 years ago to promote another heretical notion. the "c" word, "competition."

There were naysayers then as now. It will never work. Service will decline. Rates will go up. Innovation will have come to a halt. Network will be harmed. Chaos. The full catastrophe.

But events have converted those naysayers, those disbelievers, as they will eventually transform opponents of the "d" word, deregulation.

Deregulation, or unregulation, or regulatory reform, all suggest pulling back in some measure part of the government's enormous presence in these dynamic markets.

By whatever name, deregulation, whatever, it means opening up markets and promoting competition, and it is the inevitable result of steps we have already taken. Both technological trends and economic change support the presumption that market forces are increasingly adequate and that government can and should step aside and out of the way.

There is no denying the value to consumers of regulation generally. I fully support those, and in fact participated in putting a lot of these rules in place over the years. No question about it.

But many regulations have clearly outlived their usefulness. Many do not address any particular market failure. Others should be calibrated more carefully to current conditions. Most importantly, none of these are costless.

These are recurring themes in my prepared testimony. Regulation is not free and the cost to consumers who bear them are too important to ignore.

My statement catalogues a variety of different costs we have to pay to get the benefits of regulation. First, the direct cost to taxpayers which have grown substantially, ironically enough, during this period of deregulation and competition.

Then there is the substantial cost of compliance, which Mrs. Cubin has been referring to. And I emphasize, while these are incurred in the first instance by private firms, they are shifted ultimately to consumers.

My testimony documents a number of hidden, less visible invisible costs such as the cost of delay, the cost of uncertainty, regulatory risk that adds to investment cost and discourages investment in both rural and urban areas, hidden cost of inefficiency foregone, and slowed innovation, and very importantly the cost of reduced competition resulting from constraints on market conduct of incumbent firms.

The costs of complying with regulations are particularly burdensome to medium- and small-sized carriers. We should look I think for ways to apply the time-tested market principles and objectives to government regulation.

Much is made of the need for efficient markets, but there is lamentably little discussion of efficient regulation.

Regulation should be able to pass, I think, a reasonable cost/benefit test. A private firm that routinely made decisions or continued past practices whose costs exceeded their benefits would go belly up, and rightfully so. But there is no such built-in restraint on bad government regulation.

H.R. 3850 begins to address some of these problems. I have to add, I am certainly impressed by the questions that have already been posed by members of the panel because those go to the very heart of the need for cost/benefit regulation.

H.R. 3850 is consistent with the principles I have spelled out. My statement contains a fuller discussion of these points, and I would be happy to try to answer your questions.

Thank you, Mr. Chairman.

[The prepared statement of Larry F. Darby follows:]

PREPARED STATEMENT OF LARRY F. DARBY, DARBY ASSOCIATES

Thank you very much Mr. Chairman and members of the Subcommittee. I am happy to share with you my views on the importance of beginning to eliminate some of the thick, multiple layers of regulation that now unnecessarily constrain markets for telecommunications services and, more specifically, about how H.R. 3850 advances that cause.

I want to commend the leadership of the committee for launching this initiative and taking the necessary next step in letting markets, not government, be the arbiter of managerial decisions.

The Telecom Act of 1996 had four main goals: increased competition, enhanced universal service mechanisms, increased innovation and deregulation. Of these, deregulation has been accorded the least attention by the Federal Communications Commission. This lack of progress is notable, given the fact that members of Congress who passed the Telecommunications Act of 1996, the Administration, FCC Commissioners and senior staff all speak frequently and favorably of deregulation as an important and discrete goal of national telecommunications policy.

This contrast between intent and desire on the one hand and progress on the other makes clear that it is time to recharge and reinvigorate the deregulatory process. H.R. 3850 is good start in that direction.

DEREGULATION IS THE LOGICAL RESULT OF COMPETITIVE ENTRY

My statement is in two parts. The first goes to the importance and processes of deregulation, while the second addresses the specifics of HR 3850 in those contexts.

The "D" word, deregulation, has come to be quite controversial. It generally evokes more words than thought; more fear than faith; and, more conjecture than analysis. The mere suggestion of peeling back regulatory control of incumbent telephone companies is regarded by some as revolutionary; wrongheaded; and too soon, like drinking wine before its time.

But, while preparing my statement, I had a sense of deja vu. Almost twenty five years ago I testified before this subcommittee to defend and promote another heretical notion. Then, it was the "C" word—competition. Then as now, there were naysayers. Rates will go up; innovation and service quality will go down; economies of scale will be sacrificed; the public switched network will suffer technical damage; and on and on. Aunt Minnie will be irreparably harmed and in unimaginable and unspeakable ways, railed the critics.

However, events have converted the disbelievers, as they will in the future transform many of today's opponents of deregulation. It is time to begin to peel away the unneeded outer layers of the regulatory onion, much as was done in the early years by the Interstate Commerce Commission, the Civil Aeronautics Board and the Federal Power Commission.

Deregulation should and will not come at once. Regulation—the accumulation of rules—has been an evolutionary process. So it will be with deregulation and unregulation, as rules are modified and stripped away, one by one, line by line. Deregulation is a process of selective relaxation, modification and elimination of rules imposed at another time for other, sometimes forgotten, reasons.

H.R. 3850 does not totally deregulate services of incumbent telephone companies. Indeed, given the scope of that sector, this bill is a pretty modest undertaking. It applies only to a small subset of smaller carriers and to only a handful of rules.

Selective reform of existing rules for incumbents is the logical next step after opening markets to competition. The question is not whether the enormous inventory of rules and regulations should be reduced, but when. I believe now is the time to begin that process and H.R. 3850 does so.

THE BENEFITS OF REGULATION ARE NOT FREE

I am eager to recognize the considerable historical contributions of regulation to consumer welfare, but there can be no serious objection to my conclusion that many regulations are unnecessary and lead to higher cost, long delay and increased uncertainty, while reducing both the opportunity and incentives for investment. The result is to deny consumers new services now and tomorrow. For consumers, regulation today is a mixed bag.

FCC orders tend to be dominated by reference to the putative benefits of regulation and how they serve a very general notion of the "public interest" by their intervention in markets. But there is substantial literature demonstrating that regulations are not costless.

The cost of regulation takes several forms, each of which has been the object of considerable research over the years. The Landis Report, a study of regulatory processes undertaken on behalf of President-elect John F. Kennedy almost forty years ago, detailed the administrative burdens and costs of regulatory processes imposed in both the public and private sectors. Its main conclusions were corroborated two decades later by the Ash Commission initiated by the Nixon Administration. Both documented what has now become unanimously accepted: administrative regulation, like that imposed by the FCC, can if misapplied result in delay, uncertainty, unnecessarily complex and extensive rules, wasteful use of scarce resources and other costs. Regulatory benefits must be measured against these costs.

In addition to the administrative costs of regulation, economists have catalogued a long list of economic costs attributable to common carrier regulation. Dozens of books and hundreds of articles are devoted to measuring the drain on our economic potential of various forms of regulation and specific rules—disincentive effects, inducements to waste, costs of misallocation and inefficiencies, failure to innovate and others.

I cannot in the time allowed do even rough justice to the task of characterizing fully this diverse literature. My intent is more modest—to call the Committee's attention to it and to report my conclusions from it.

THE COSTS OF REGULATION ARE NOT TRIVIAL

The costs of availing ourselves of the benefits of regulation are not trivial. However, it has been difficult to estimate accurately the size and distribution of the burden of regulatory costs. For many of the same reasons that regulatory benefits are vaguely named and seldom quantified, analysts have struggled to quantify the costs of regulation by state and federal agencies; of different regulatory schemes; and, of specific regulations.

The problem common to measuring both regulatory costs and benefits is the difficulty of specifying what would exist or materialize in the absence of particular regulations. A growing body of theoretical and comparative empirical studies of markets "before and after" or "with and without" regulation have turned up significant costs from several sources.

Agency costs. Regulation requires regulators whose support requires significant government funding. For the telecommunications sector these costs have grown dramatically at both the state and federal levels during the period of increased competition, reliance on market forces and deregulation. Fewer rules mean less monitoring, administration and enforcement.

Direct costs of compliance. Filing reports, keeping accounts, conducting studies and analyses, representing ones interests in regulatory proceedings and otherwise complying with the requirements set out in thousands of rules is an expensive undertaking. I have just reviewed a study suggesting regulatory compliance costs growing nearly twenty percent a year and summing, in the most recent study year, to about sixteen percent of total costs or two months of customer billings per year. This rural carrier estimated that the recurring costs of regulatory compliance come to almost $25.00 per customer line per year. Another carrier estimated the cost of complying with one FCC rule (the FCC's ARMIS reporting requirements, which are addressed by H.R. 3850 and discussed below) at about $2.00 per access line.

These legal, accounting, operations, administrative and other costs are generally passed through and born directly by consumers. To the limited extent that they may in the first instance be borne by shareholders, they are ultimately shifted to users in the form of higher capital costs. These costs represent deadweight losses, unless there is some specific, identifiable public benefit associated with the specific regulatory activity from which they are derived.

The resources applied by the companies directly are complemented by a vast regulatory apparatus of lawyers, consultants, accountants, economists and other professionals in the private sector. On balance, since their respective efforts are largely mutually offsetting, they create little demonstrable value for consumers.

Costs of delay. The costs of regulatory lag and delay are well documented in the regulatory economics literature, even though it is difficult to get a firm estimate of the overall cost. Due process takes time. Time is money and benefits delayed are benefits lost. Practitioners in gaming regulatory processes get paid by the clock, so there is generally little incentive to get things done quickly.

Costs of uncertainty and added risk. These factors increase capital costs. They are ultimately borne by consumers—whether directly through higher rates or indirectly through higher prices for the goods and services they buy from business users. Investors understand markets better than they understand regulatory processes. Most reports by securities analysts have long sections describing risks associated with different regulatory action and inaction.

Costs of inefficiency and resource misallocation. Regulation leads to several kinds of static and dynamic inefficiencies. Regulation may lead to high cost carriers winning business at the expense of lower cost carriers; or use of inputs in the wrong proportions; or rates that are purposefully set at levels that do not reflect costs. Several studies have documented the resource waste from inefficiencies occasioned by regulation.

Costs of foregone innovation. Regulation can and does stall innovation—innovation in the introduction of new services; innovation in the introduction of new rate making schemes; and, innovation in the introduction of new technologies and production methods. The delay in the introduction of cellular services is often cited, but there are others as well.

Costs of reduced competition. Regulation of incumbent carriers is frequently designed to constrain their conduct in competitive markets to guard against predatory behavior. However, a byproduct of meeting that goal is to suppress competition that would otherwise serve consumers' needs. It is difficult to calibrate regulations to prevent only "undesirable" competition and the unavoidable result is that otherwise healthy market rivalry is sacrificed in pursuit of that goal.

REGULATORY COSTS ARE ESPECIALLY BURDENSOME FOR SMALLER CARRIERS

Much of the current regulatory scheme applied to medium-sized carriers (MSCs) was formulated and imposed in an earlier technological era and in market environments wherein the expected costs and benefits of regulation vis-a-vis market forces were much different. Both costs and benefits of regulation are changing with changes in the speed of technology development, the evolution of user needs and with the proliferation of computers and digital networks. The growth of actual and potential competition is also instrumental in intensifying the need to reevaluate how well existing regulations fit the new circumstances.

In addition to being subject to regulations designed for different technological and market circumstances, many of the regulations being applied to MSCs were designed primarily for applications to the largest local exchange companies. The regulations are premised implicitly on the presumption that one regulatory scheme fits all carriers, irrespective of size, market position and particularized requirements—all without regard to the value of customizing regulations to conform more closely to diverse market circumstances and user needs.

As discussed earlier, the additional resource requirements for regulated companies are substantial. Since the total burden of the costs of regulatory schemes is sometimes invariant with respect to firm size, customers of smaller firms are disproportionately burdened. Like any fixed fee imposed uniformly across the board, these costs impose relatively greater burdens on economically smaller entities. The overhead cost of regulation must be spread across a smaller number of customers, thereby leading to higher burden per customer. The FCC has long recognized this fact and has tailored and pared back its regulatory programs for very smallest regulated firms.

The current "one regulation, one burden for all" has the characteristics of a "poll-type" tax that imposes the same burden on all and without regard to ability to pay. An important example of this kind of cost is the administrative burden associated with the Cost Allocation Manual (CAM), a matter to which I will return.

CONGRESS SHOULD INSIST ON "EFFICIENT" REGULATION

The effectiveness of market competition depends on the efficiency of regulation. Inefficient regulation spawns inefficient market processes and together they lead to waste and resource misallocation.

It is widely recognized that inefficient firms and market practices undermine the public interest and diminish economic welfare. Less recognized is the fact that inefficient regulatory agencies, programs and practices have the same destructive effects.

Unnecessary and unproductive regulations are increasingly corrosive and indefensible in the evolving competitive marketplace. In the quiet world of rate base, rate of return, regulated monopoly where market competition was the rare exception, the costs of regulation could be hidden and passed along to users with negligible market consequence. However, in an increasingly technology driven, competitive market environment, distortions borne of unnecessary, costly regulations will have serious impacts on resource allocation and tend to undermine the very legitimacy of market processes.

The very same arguments adduced and widely accepted in favor of not extending legacy telephone regulations to the Internet, or to cable companies, or wireless companies or to new technologies more generally, also apply forcefully in the case for making regulation of medium sized telephone companies more efficient.

By adding additional expenses for compliance, regulations hamper the ability of firms to become the lowest cost provider in the marketplace and may assist less efficient firms to win the business. This outcome is especially likely if regulations slow the ability of firms to respond in the marketplace to rivals' initiatives.

Unlike in the old days of cost plus regulation of protected monopolies, the costs of regulation cannot be hidden and assumed to have no allocative or efficiency consequences. Nor are we free to assume, without investigation and analysis that they are trivial and with negligible consequences. These costs influence the structure of penalties and rewards and thereby influence a wide range of management decisions—from pricing, to new service introduction and old service improvement, to product and process innovation, to the most fundamental decision of all, whether to invest in innovation and network modernization.

The time has passed, if it ever was, for the Commission simply to assume—without investigation or analysis—that it and the regulations it promulgates are completely benign forces in the marketplace. The facts suggest otherwise. Regulations matter and they matter a lot.

REGULATIONS SHOULD PASS A REASONABLE COST BENEFIT TEST

The pursuit of efficient rules will necessitate that they should be subjected prospectively and from time to time retrospectively to a systematic review of their costs and benefits in the context of dynamically changing technological and market environments. Section 10 (a) of the Telecom Act of 1996 contains language indicating that stripping away old rules or declining to extend new ones—regulatory forbearance—is appropriate if a particular provision or regulation is inconsistent with the public interest. The proper test of "consistency with the public interest" is a more systematic analysis of the costs and benefits occasioned by individual regulations.

There is no basis in the Act or in common sense for the Commission to impose regulatory costs without creating corresponding and substantially greater public benefits. The presumption has been (should be) that markets work and that Commission interference and regulations must be justified. Cutting back unneeded, unnecessary and unproductive regulations is just as much in the public interest as are rules that compensate for market imperfections and which generate benefits in excess of their costs.

Regulation is inefficient to the extent that the rules occasion costs in excess of benefits. Inefficient regulation is just as damaging to the public interest as insufficiently competitive markets. Efficient regulations should not impose unnecessary costs. The intrusion of efficient regulations into private decision making processes should be no more than required to effect specific, identifiable regulatory benefits.

H.R. 3850 IS A LIMITED FIRST STEP

H.R. 3850 will help accelerate the process of "unregulation" by eliminating or reducing for medium-sized carriers selected rules designed for general applicability that manifest on the margin more costs than benefits for consumers and the public interest. It selectively targets regulations for which social costs exceed social benefits and which are particularly burdensome for smaller carriers. It will reduce regulatory cost burdens, thereby freeing resources for meeting consumer needs rather than the convenience of regulators. H.R. 3850 will also reduce delay and uncertainty, thereby reducing capital costs and increasing the propensity to invest in the sector.

The specific provisions of H.R. 3850 are consistent with the need for and principles of deregulation I have spelled out above. Time has not permitted me to do the kind of analysis of costs and benefits of the provisions that I would have liked, but I can spell out some general impressions of the bill's main provisions.

Section 281 would require the Commission to take notice of the relatively greater burden of its regulations on smaller carriers and to tailor them accordingly. Implementation of that section would lead to greater care and more analysis by the Commission of the specific costs and benefits of applying regulations designed at other times, for other purposes and other carriers. The result would be a more efficient regulatory regime going forward. The need for and process of tailoring new regulations to reflect their relative cost burden might usefully be applied as well during the process of reviewing the applicability of current regulations—a matter that is addressed in other parts of H.R. 3850.

Section 282 would exempt subject carriers from filing cost allocation manuals and those reports required under ARMIS—the Automated Reporting and Management Information System. Those reports are particularly extensive and costly to prepare and maintain. They are especially burdensome for smaller carriers.

Section 283 would allow MSCs to take full advantages of the economies of integrating operations and other market activities. Doing so would eliminate the wasteful duplication of staff and activities now required by the Commission's separate affiliate requirements. Separation sacrifices synergies and cost savings, thereby denying their value to consumers. "Convergence"—the implosion of different technologies and markets—is the name given to one of the dominant supply side trends brought about by technological and market change. Concurrently, there is increasing evidence of heightened consumer demand for "one stop shopping". Unnecessary corporate separation requirements thwart both of those trends. It is important to note in this context that the Commission has several times in the past found the public interest adequately served by using other means than structural separation.

Section 284 would allow MSCs to "unbundle" regulatory requirements and to free themselves from the "all or nothing" options respecting participation in tariff pools and the form of earnings restrictions applied to them. The economics of pooling, in the case of the National Exchange Carrier Association (NECA) Pools, are driven in large part by size and size-related costs. Larger operations find advantage in filing their own tariffs, while smaller ones save costs and prefer to pool and average costs with other small entities. Section 284 would allow MSCs with multiple operating companies to "optimize" their regulatory structure to conform to the pooling economics of their larger and smaller operating entities.

A similar situation exists with respect to the choice, by carriers, of the form of earnings control—price caps versus traditional rate of return regulation. Some MSCs find that the economics favor having some affiliates under one scheme and others under the alternative. However, existing rules require all or nothing choices, thereby preventing MSCs from mixing their regulatory regimes to match the underlying economic differences among different operating companies. The requirement to choose a single company-wide form of earnings constraint dictates that some operating companies will be under the wrong regulatory scheme. The result is that the advantages of tailoring regulation to individual circumstances—the basis of the Commission's dual regulatory approach—are denied to some MSC customers . Section 284 would eliminate that anomaly.

Section 286 would reduce the delay in the introduction of new services. New service introduction, along with rate reductions, is the principal means whereby the benefits of new technology and market competition are conveyed to consumers. Delay in either simply defers realization of consumer benefits. Frequently the source of delay in approving the roll out of new service favored by users is concern expressed by competitors or other special interests.

Section 287 mirrors 286 by extending flexibility and reduction of delay from service introduction to rate reductions. One of the artifacts of the old monopoly, pre-competition, regulatory regime is concern that rates might be too low. While it may be theoretically possible that rate reductions hurt consumers, the occasion for that in the real world is increasingly rare. By allowing rate deaveraging, Section 287 would bring rates more into line with costs and allow consumers to benefit from competition initiated not only by entrants but also incumbents. Section 287 (b) specifically provides for far more pricing discretion in response to entry by a large local exchange carrier—in particular one that is located adjacently and may be tempted to pick off large, high margin customers of the MSC.

Sections 5 and 6 require the Commission to speed up their review processes for both merger reviews and for MSC petitions for reconsideration or waiver. These sections address a serious problem of regulatory delay and, absent some very special circumstances, the Commission should have little trouble in complying with them. Such delays are particularly burdensome to managers, since they defer consideration of other options. Many firms prefer a negative decision to no decision or one subject to unknown delay, since any decision allows them to proceed with other options and courses of action.

SUMMARY AND CONCLUSION

The case for accelerating regulatory reform of incumbent telecommunications carriers is compelling. Unregulation—peeling away layers of rules accumulated at other times and under different techno-economic conditions—offers the promise of increasing consumer welfare. By freeing carriers from unnecessary restrictions, government can reduce direct costs, increase rate competition and speed the introduction of new services. All will be to the advantage of end users. It will create value for consumers if regulations—new and continued—are rationalized more carefully on the basis of marginal costs and benefits to users. There is no doubt that many legacy regulations no longer serve the public interest.

H.R. 3850 is a good first step in the process. The Congress has already found a specific public interest in tailoring regulations carefully for medium sized carriers and wrote that preference into the 1996 Act as Section 10 (a). H.R. 3850 provides additional guidance to the Commission in that direction. The specific provisions of H.R. 3850 are designed to pare back regulations that appear to occasion more costs than benefit.

Mr. TAUZIN. Thank you very much, Larry. Poetic for an economist at times. Thank you very much, sir.

Mr. Jack Mueller, President of Cincinnati Telephone Company/ Broadwing. What's the slash all about?

Mr. MUELLER. Broadwing is the parent company, that's all, since Cincinnati Bell Telephone Company is a subsidiary of Broadwing.

Mr. TAUZIN. Welcome, sir.

STATEMENT OF JACK MUELLER

Mr. MUELLER. Thank you.

Good afternoon, Mr. Chairman, and members of the subcommittee:

Thank you for allowing me to present my company's perspective on H.R. 3850. Before discussing the reasons why Cincinnati Bell supports this legislation, I will provide some background on Cincinnati Bell.

Cincinnati Bell serves the greater Cincinnati marketplace providing local exchange services for some 1.1 million access lines, as shown on chart No. 1.

[Chart shown.]

Cincinnati Bell is one of the oldest telephone companies. Although once part of the Bell System, it has never been owned by nor affiliated with a Regional Bell Operating Company.

Since 1873, Cincinnati Bell has had a reputation for providing innovative high-quality service. Most recently, Cincinnati Bell has been in the forefront in bringing advanced services to its customers.

A DSL service is currently available to 75 percent of our customers. The provision of innovative service has been crucial to maintaining customer satisfaction, the cornerstone of our business.

Although Cincinnati Bell is extremely proud of its heritage and reputation, it must move beyond its traditional boundaries to remain a player in the competitive market mandated by the 1996 Act.

The first important step in this expansion occurred last year when Cincinnati Bell Telephone's holding company acquired IXC Communications.

IXC's state-of-the-art fiber network and Cincinnati Bell's operational expertise created a powerhouse in the Internet-backbone marketplace.

The new company, Broadwing, is an integrated communications provider, or ICP, that delivers voice, data, wireless, and Internet services nationwide.

[Chart shown.]

The next chart shows the current Broadwing companies and its fiber network. Although Cincinnati Bell and Broadwing are proud of what we have accomplished in the past 9 months, we cannot stop here.

Unfortunately, Broadwing is disadvantaged relative to other ICPs because of restrictions placed on its telephone company.

I believe that the time is right to lift the restrictions that hinder Cincinnati Bell and other mid-sized companies in their quest to provide alternatives to consumers throughout the country.

H.R. 3850 is a step in this direction. As the mid-sized carriers open their traditional markets, there is no need for the FCC to oversee our every move.

In short, the 1996 Act is working. Cincinnati Bell has complied with all of the market opening provisions in Section 251.

[Chart shown.]

As the next chart shows, the Cincinnati marketplace is one of vibrant competition.

[Chart shown.]

And as the final chart shows, SBC and Verizon will have entered the market by the end of next year. Yet, despite mounting competition from huge companies, mid-sized companies are still subject to the regulatory paradigm that existed prior to competition.

At the same time, competitors enter our market with little regulatory oversight. It is time for the regulatory structure to better reflect market realities for the mid-sized companies.

While I am not suggesting what the regulatory regime should be for other ILECs, I believe that the public interest demands that the mid-sized companies be considered separately.

The provisions of H.R. 3850 specifically address the fact that one-size-fits-all regulation of incumbent telephone companies does not meet the needs of today's marketplace.

H.R. 3850 proposes a regulatory framework for 2 percent companies founded on the principles of choice, fairness, and independence.

So in closing let me sum up:

First, H.R. 3850 will enhance consumer choice by eliminating unnecessary costs to our businesses so that we can move more easily—so that we can more easily invest in the latest technologies and bring advanced services to more Americans.

It also promotes consumer choice by providing 2 percent companies with greater flexibility and through the introduction of new services.

H.R. 3850 will allow mid-sized companies to offer new services in the same fashion as their competitors. In order to successfully compete, we must be as fast, if not faster, in bringing new products and services to our customers.

Second, with regard to fairness, H.R. 3850 will provide additional pricing flexibility for 2 percent companies by allowing for the deaveraging of interstate access rates and the ability to enter into contractual arrangements with customers for specific needs.

Furthermore, it will provide full pricing deregulation on interstate services when a large incumbent local exchange carrier enters our service area.

In providing this flexibility, H.R. 3850 provides an opportunity for policymakers to access how do regulatory initiatives foster increased competition.

Finally, H.R. 3850 seeks to promote independence, an increasingly rare attribute in an environment where continuing consolidation of the industry has decreased the number of competitors.

While there is no doubt that each company's success is its own responsibility, today's inappropriate one-size-fits-all regulation tilts the competitive landscape against 2 percent companies.

H.R. 3850 promotes independent telephone companies by providing an appropriate level of regulatory oversight while eliminating unnecessary, costly, and time consuming regulatory burdens that impede innovation and ultimately our success.

H.R. 3850 doesn't give the 2 percent companies special treatment. It simply rectifies regulatory inequities by creating an appropriate level of regulation for 2 percent carriers.

The regulatory flexibility found in H.R. 3850 would allow us to invest in the latest technologies, pursue out-of-territory opportunities, and provide consumers with an outstanding choice of telecommunications services.

Thank you.

[The prepared statement of Jack Mueller follows:]

PREPARED STATEMENT OF JACK MUELLER, PRESIDENT, CINCINNATI BELL TELEPHONE

Good afternoon Mr. Chairman and members of the Subcommittee. My name is Jack Mueller, and I am President of Cincinnati Bell Telephone. Thank you very much for allowing me to present my company's perspective on the importance of HR

3850 and the reasons this legislation is significant to our nation's telecommunications consumers.

My perspective on HR 3850 is not from the point of view of a regulatory specialist but rather as one charged with managing the operational aspects of a mid-size local exchange telephone company. Before discussing the specific reasons why Cincinnati Bell supports this legislation, I believe it would be helpful to provide some brief background on Cincinnati Bell.

Cincinnati Bell Telephone serves the Cincinnati, Ohio marketplace, providing local exchange services for some 1.1 million access lines in southwestern Ohio, northern Kentucky, and southeastern Indiana. Founded in 1873, Cincinnati Bell is one of the oldest independent telephone companies in the nation. As the "Bell" in the name suggests, Cincinnati Bell was once part of the Bell System. After divestiture, however, AT&T sold its minority interest in the company and, along with the Southern New England Telephone Company (SNET), Cincinnati Bell became one of the two independent companies that emerged from the AT&T breakup. After SNET's acquisition by SBC, Cincinnati Bell became the sole remaining independent company of the former Bell System. Most importantly, Cincinnati Bell has never been owned by nor affiliated with a Regional Bell Operating Company.

Throughout its 127 years Cincinnati Bell has had a reputation for providing innovative, high quality service. For example, Cincinnati Bell was the first Bell company to become 100% dial in 1952 and the first company in the nation to deploy SONET rings in 1992. More recently, Cincinnati Bell has been in the forefront in bringing advanced services to its customers via its extensive ADSL network. Under the product name of ZoomTown.com, this service is available to 75% of our customers—the highest level of ADSL availability anywhere in the United States. The provision of innovative, high quality service has been crucial to maintaining customer satisfaction that is the cornerstone of our business. Most recently Cincinnati Bell's reputation in this area is supported by its rank as one of the top three telecommunications companies in the country in customer satisfaction according to J. D. Power and Associates.

Although Cincinnati Bell is extremely proud of its heritage and reputation for quality and innovative services in the Cincinnati market, it can no longer be content to serve a single market. To be a player in the competitive telecommunications marketplace encouraged by the '96 Act and to provide the services consumers demand, Cincinnati Bell must move beyond its traditional boundaries. The first important step in this expansion occurred last year when Cincinnati Bell Telephone's holding company, Cincinnati Bell, Inc., acquired IXC Communications, Inc. IXC's state-of-the-art fiber network, combined with the operational expertise and customer-oriented focus of Cincinnati Bell, created a powerhouse in the Internet backbone marketplace. The new company, Broadwing Inc., is an integrated communications provider (ICP) that delivers voice, data, wireless and Internet services nationwide and is now considered a major Internet backbone provider.

Although Cincinnati Bell and Broadwing are proud of what we have accomplished in the past nine months, we cannot stop here. But to realize our full potential, we must be able to compete on the same terms as our competitors. Unfortunately, Broadwing is disadvantaged because of the restrictions placed on Cincinnati Bell Telephone. Unlike Broadwing, other ICPs operate relatively free of burdensome regulatory constraints in their provision of local, long distance, and advanced services. I believe that the time is right to lift the restrictions that unnecessarily hinder Cincinnati Bell and other mid-size companies in their quest to provide competitive alternatives to consumers throughout the country. We are not asking for special treatment, only equal treatment. As we open our traditional markets, there is no need for the FCC to oversee our every move.

As Adam Smith said more than 200 years ago, "Every man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way, and to bring his industry and capital into competition with those of any other man or order of men." I believe Cincinnati Bell and the telecommunications environment in Cincinnati embody Mr. Smith's beliefs and the vision for competition that Congress intended in the Telecommunications Act of 1996.

Cincinnati Bell Telephone currently has interconnection agreements with 44 different companies and is actively competing with 9 full-service telecommunications providers, 4 resellers, and 6 wireless companies. By the end of the year another 13 full-service providers will be operational in Cincinnati.

Competitors are collocated in 35 of Cincinnati Bell's 56 Central Offices. Interim pricing for unbundled network elements as well as permanent resale discounts are in place. I would also like to add that the Cincinnati market was included in the initial implementation of local number portability, which the company successfully rolled out on schedule. In short, Cincinnati Bell has complied with all of the market-opening provisions in section 251 of the '96 Act.

Today, competitors in our marketplace include such well-known companies as AT&T, Worldcom, Time Warner, Intermedia Communications, and Global Crossing.

The future holds even more major competitors for the Cincinnati marketplace. By the end of next year Cincinnati Bell Telephone will be facing competition from the two largest local telephone companies in the United States—SBC and Verizon. Both of these companies are required to compete in Cincinnati for business and residential customers as a condition to the approval of their respective mergers. It is worth noting, too, that each company already has a major presence in the Cincinnati wireless market, a market in which each has proven to be a formidable competitor. While many of Cincinnati Bell's competitors are much larger, SBC and Verizon each have over 50 times more access lines than Cincinnati Bell.

As you can see, the '96 Act is working. The Cincinnati marketplace is one of vibrant competition for telecommunications services.

Yet, in spite of the mounting competitive entry from huge telecommunications companies, mid-size companies are still subject to the regulatory paradigm that existed prior to competition. In fact, since the passage of the '96 Act, the FCC has imposed regulatory requirements on mid-size telephone companies that did not previously exist. At the same time, our competitors—some of the largest telecommunications providers in the world—enter our market with little regulatory oversight. It is time for the regulatory structure to reflect market realities for the mid-size companies. While I do not in any way want to suggest what the regulatory regime should be for other ILECs, I do believe that in today's telecommunications marketplace the public interest demands that the mid-size companies be considered separately.

The provisions of HR 3850 specifically address the fact that "one-size-fits-all" regulation of incumbent telephone companies does not meet the needs of today's telecommunications marketplace. HR 3850 proposes a regulatory framework for two-percent companies founded on the principles of choice, fairness, and independence.

First, with regard to choice, HR 3850 will assist mid-size companies in eliminating unnecessary costs to our businesses so that we can more easily invest in the latest technologies and bring advanced services to more Americans. By investing in our networks and rolling out new services, we will enhance consumer choice in the marketplace.

This legislation also promotes consumer choice by providing two-percent companies with greater flexibility in the introduction of new services. HR 3850 will allow companies like Cincinnati Bell to offer new services in the same fashion as our competitors so that consumers reap the benefits of innovation more quickly. In order to successfully compete we must be as fast, if not faster, and more innovative in bringing products and services to customers. In providing this flexibility, HR 3850 provides an excellent opportunity for public policy makers to assess how deregulatory initiatives foster increased competition and consumer benefits.

Second, with regard to fairness, HR 3850 will provide additional pricing flexibility for two-percent companies by allowing for the deaveraging of interstate access rates, the ability to enter into contractual arrangements with customers for specific needs, and one-day approval of tariffs just like our competitors. Furthermore, HR 3850 will provide full pricing deregulation on interstate services when a large incumbent local exchange carrier enters our service area.

Finally, HR 3850 seeks to promote independence, an increasingly rare attribute in an environment in which continuing consolidation of the industry has decreased the number of competitors. I believe that the interests of our nation are better served in a telecommunications market where multiple telecommunications providers are fighting every day for the privilege of serving customers.

In an industry that is moving at light speed, mid-size telephone companies like Cincinnati Bell must be able to move quickly to continue to provide reliable service. While there is no doubt that each company's success or failure in the marketplace is its own responsibility, today's overreaching regulation tilts the competitive landscape against two-percent companies and in favor of the large players entering our markets. HR 3850 promotes independent telephone companies by providing an appropriate level of regulatory oversight while eliminating unnecessary, costly and time-consuming regulatory burdens that impede innovation and ultimately our success in the marketplace.

HR 3850 doesn't give the two-percent companies special treatment. It simply rectifies regulatory inequities by creating an appropriate level of regulation for two-percent carriers. The regulatory flexibility found in HR 3850 would allow us to invest in the latest technologies, pursue out of territory opportunities and provide consumers with an outstanding choice of telecommunications services.

Again, thank you for the opportunity to appear before you today. I will be happy to answer any questions you may have.

Mr. TAUZIN. Thank you very much, Mr. Mueller.

Next is a man who I know knows where Golden Meadow is, Mr. David Cole, Vice President of Operations Support, CenturyTel of Monroe, Louisiana. Also, by the way, way up north, the home of Delta Airlines.

Mr. Cole.

STATEMENT OF DAVID COLE

Mr. COLE. Yes. Thank you.

Good afternoon, Mr. Chairman, members of the committee:

Thank you for your interest in the issues that we are discussing today, and thank you also for inviting CenturyTel to participate in this process.

My name is David Cole and I am Senior Vice President of Operations Support for CenturyTel headquartered in Monroe, Louisiana.

CenturyTel is a leading provider of integrated telecommunications services in primarily rural and smaller metropolitan markets.

We serve small markets throughout Louisiana, Ohio, Mississippi, Tennessee, Wisconsin, Minnesota, and Texas. We also serve Pinedale, Big Piney, Larson, and Medicine Bow in Wyoming, and we are especially appreciative of the leadership of Mrs. Cubin, Mr. Pickering, Mr. Gordon, and Mr. Barrett in introducing H.R. 3850.

Many of our markets may be rural and small but our customers demand and they deserve the highest quality telecommunications services available.

I am proud to say that CenturyTel has made this commitment to serve these markets by working to provide the same variety of high quality services that area available here in Washington.

We have already deployed broadband digital subscriber line service in Ohio, Wisconsin, Texas, Montana, and the State of Washington, and we plan to spend about $20 million more to make DSL service available to over 40 percent of our access lines by the end of this year.

I would like to spend just a few minutes today on some of the provisions of this legislation that are most important to CenturyTel. the merger review, price cap, and pooling waiver provisions.

Last summer, CenturyTel by itself and in partnership with Spectra Communications Group and Telephone USA of Wisconsin signed agreements with GTE to purchase approximately 460,000 access lines in the States of Arkansas, Missouri, and Wisconsin.

These are exchanges that GTE decided they no longer wanted to serve and that closely complemented CenturyTel's existing operations.

Once we are able to begin serving these exchanges, we plan to spend millions of dollars upgrading the facilities in these states and launching new services, including dialup and broadband Internet access, but also including some very common services that these customers currently do not have.

These new services include the offering in these communities for the first time in many cases of voice mail, call waiting, caller ID, and other services that you and I have enjoyed for many years.

Today as we speak three of the four acquisitions we have filed at the FCC this past spring are still pending FCC approval. One of these transactions will actually create the Nation's first African American-owned local exchange carrier operating in the State of Missouri.

These past few months have been expensive ones for CenturyTel. We have assembled a team of well over 100 employees to make these transactions a reality.

Both companies are ready to close, and all State approvals have been received. However, we and our future customers still wait.

In order to complete these transactions we must also seek and obtain Commission approval for a set of rule waivers, including waivers of the price cap, common line pooling, and a study area of boundary rules.

These waivers are routinely granted to all applicants because they raise no substantial policy for legal issues. Although routine, this process normally takes a number of months to complete and the FCC has no established deadlines within which to complete this review.

Therefore, we have been unable to close on any of these transactions largely because of regulatory delays. Rapid approval of transactions such as this—and there will be more of them if the RBOCs further divest rural properties, are in the best interest of consumers.

Also, apart from the transactional context the Commission's rules prohibiting CenturyTel to elect price cap regulation for individual operating companies are outdated and deny the benefits of price caps to hundreds of thousands of mid-sized carriers customers.

Although price cap regulations will not work for all of CenturyTel's companies, it would make sense for some. However, the Commission's current rules prevent us from implementing price caps in this manner.

In conclusion, Mr. Chairman, members of the committee, I urge you to press forward with the regulatory and FCC reform efforts reflected in the legislation before you today. These changes we would make are essential to permit carriers like CenturyTel to compete in today's new world of telecommunications and to deploy DSL Internet access and other advanced communications services to our customers.

I would like to thank you again for the opportunity to appear before you today and look forward to responding to your questions.

[The prepared statement of David Cole follows:]

PREPARED STATEMENT OF DAVID COLE, SENIOR VICE PRESIDENT OF OPERATIONS SUPPORT, CENTURYTEL, INC.

Good morning, Mr. Chairman and members of the Committee. Thank you for your interest in the issues we are discussing today and thank you for inviting us to participate.

My name is David Cole. I am Senior Vice President of Operations Support for CenturyTel, headquartered in Monroe, Louisiana. CenturyTel is a leading provider of integrated telecommunications services in mostly rural and small metropolitan markets. Our employees provide wireline, wireless, long distance, Internet, security and data services to more than 2 million customers in 20 states throughout the country.

INTRODUCTION

Our markets include many small markets throughout Louisiana, Ohio, Mississippi, Tennessee, Wisconsin, Minnesota and Texas. We also serve Pinedale, Big Piney, Farson and Medicine Bow, Wyoming and are especially appreciative of the leadership of Ms. Cubin, Mr. Pickering, Mr. Gordon and Mr. Barrett in introducing HR. 3850.

All of CenturyTel's telephone operations are "rural telephone companies" as defined by the Telecommunications Act of 1996. Most of our service areas are extremely rural in nature, being characterized by relatively low customer densities and difficult geographic environments. Thus, CenturyTel is well acquainted with the problems and challenges of building, maintaining and enhancing advanced telecommunication services in small towns throughout America. We specialize in providing top-notch service in these very markets.

Many of our markets may be rural and small, but our customers demand and deserve the highest quality telecommunications services available. I am proud to say that CenturyTel has made the commitment to serve these markets by providing the same variety of high-quality services that are available to you here in downtown Washington.

We have already deployed broadband digital subscriber line service in Ohio, Wisconsin, Texas, Montana, and Washington state, and we plan to spend about $20 million more to deploy DSL services to over 40 percent of our markets this year. For us, this rollout doesn't just make good business sense, it also reflects our commitment to serve our markets with the most advanced and highest quality services available today. These services ensure that our rural residential consumers have high-speed access to the Internet. In addition, we make sure that the few businesses we do serve can have access to the 21st Century communications products they need to grow and flourish in the information economy.

THE NEED FOR H.R. 3850

Which brings us to why we are here today. As much as we are currently doing to deploy broadband and launch competitive ventures, like other mid sized carriers, we are experiencing what I would term, "regulatory drag" working within today's framework of outdated and duplicative FCC regulatory requirements. One of the fundamental goals of the 1996 Act was to stimulate investment and innovation. Another goal was to deregulate. The question that we should be asking is not whether new services should be deployed, but how quickly they will be deployed to all Americans, regardless of where they live. There is a direct correlation between speed of deployment and deregulation of the type contained in H.R. 3850—one that demonstrates that regulation is not always in the best interests of our customers.

We believe the FCC should adopt reasonable interpretations of the Communications Act that avoid prescriptive restraints on companies willing to make the commitment to serve rural markets. HR. 3850 provides the proper legislative vehicle to remove archaic regulatory rules designed for the largest telephone companies when they were operating in a legally-sanctioned monopoly environment.

Today, Congress has an opportunity to remove those regulatory barriers by passing legislation that allows midsize and smaller carriers to focus on those things that are most important to their customers: investing in infrastructure to deliver new and improved services; and launching new out-of-region competitive ventures; rather than spending customer dollars to comply with duplicative and outdated FCC rules.

In considering this legislation, I would ask that you examine the simple facts.

- Rural markets depend on modern telecommunications services for economic development.
- The cost to provide services to these markets is high with little interest shown by larger carriers to provide services there.
- Midsize and smaller companies, such as CenturyTel, have the experience to serve these markets, and are willing to make the investment necessary to do so.
- There is no gain in consumer benefits, competition, or innovation associated with the regulatory burdens that H.R.3850 would lift.
- Critical investment dollars should be directed toward deploying infrastructure and introducing new services, rather than toward regulatory compliance.

I want to spend just a few minutes on some of the provisions of this legislation that are most important to CenturyTel—merger review; and price cap and pooling waivers.

Merger Review: Sixty percent of CenturyTel's growth has taken place within the last four years through acquisition of telephone access lines. Many of these lines have been, and will continue to be, acquired from Bell operating companies and the former GTE. Last summer, CenturyTel, by itself and in partnership with Spectra Communications Group and Telephone USA of Wisconsin, signed agreements with GTE to purchase approximately 460,000 lines from GTE in Arkansas, Missouri and Wisconsin. These are exchanges that GTE no longer wants to serve, and that closely complement CenturyTel's existing operations.

Once we are able to begin serving these exchanges, they will be among the highest-priority areas in which we plan to launch DSL-based broadband Internet access services. We have hired 900 new employees to respond quickly to customer needs in these states. We plan to spend literally millions of dollars upgrading the facilities in these states and launching new services, including dial-up and broadband Internet access, but also including some very common services that these customers currently cannot access. These new services include the offering in these communities—for the first time, in many cases—of voice mail, call waiting, caller ID, and other services that you and I have enjoyed for years.

Today as we speak, three of the four acquisitions we filed at the FCC this past spring involving more than two hundred twenty thousand access lines are still waiting for FCC approval. One of these transactions will create the nation's first African-American-owned local exchange carrier, and it will operate in Missouri.

These past few months have been expensive ones. To date, we have assembled a team of well over 100 employees to make these transactions a reality. Both companies are ready to close, all state approvals have been made; however, we and our future customers still wait.

In 1996, CenturyTel reached agreement to acquire and merge its operations with Pacific Telecom, Inc. (PTI), a midsize local exchange carrier that served about 600,000 lines, primarily on the west coast, and that did not overlap with CenturyTel's local exchange operations. Our combined operations comprised a total of just six-tenths of one percent of the local telephone lines in the country, gave us a cellular business smaller than those of nine other carriers, and made us the twenty-sixth largest broadband PCS carrier in the country. Nevertheless, the Commission applied the same type of competitive analysis it has repeatedly applied to the large headline-grabbing Bell operating company mergers. This despite the fact that, even from the outset, there was no serious contention that our merger would be blocked or that it posed any anti-competitive effects whatsoever. The Department of Justice showed no concern with our Hart-Scott-Rodino filings. State regulators uniformly approved the deal. Most tellingly, in response to the FCC's Public Notice seeking comment on the transaction, no party opposed, or even commented upon, the transaction.

But more importantly, the FCC's review delayed the launch of our service to customers that we wanted and were ready to serve. Since we closed that merger in 1997, penetration of enhanced and information services has grown dramatically, as our technical and marketing expertise has brought additional value to the former PTI customers.

In today's digital economy, the FCC needs to make its decisions quickly when reviewing mergers, in order to allow companies that are poised to enter the market and improve service to do so. While the FCC should have an opportunity to pass on the public interest benefits of wireless license transfers, it should do so quickly, and with the minimum delay necessary to make an informed decision on the qualifications of the purchaser.

Price cap and pooling waivers: In order to complete these transactions, we must seek and obtain Commission approval for a set of rule waivers, including waivers of the price cap, common line pooling, and study area boundary rules. These waivers are routinely granted to all applicants because they raise no substantial policy or legal issues. Although routine, the process takes an absolute minimum of six months to complete, and the FCC has no established deadlines within which to complete its review.

The FCC's concerns that carriers could use the price cap system in this context to manipulate rates are unfounded. When a carrier changes the type of regulation under which it is regulated, the FCC must approve the company's tariff. At that time, the Commission must determine whether the rates are just and reasonable, and may investigate rates that it believes are not. Similarly, the National Exchange Carriers Association (NECA) common line pool serves to even out interstate access charges that non price cap carriers across the country charge to long distance carriers. Especially in light of allegations that some long distance carriers may be reducing or eliminating service in areas where access charges are too high, the Commission should be embracing the NECA pool as a useful tool to preserve consumer choice.

Nevertheless, we have been unable to close on any of these transactions, largely because of regulatory delays at the Commission. Rapid approval of transactions like this—and there will be more of them as the RBOCs divest of their properties—are in the best interest of consumers.

Apart from the transactional context, the Commission's rules prohibiting carriers to elect price cap regulation for individual operating companies are outdated and deny the benefits of price caps to hundreds of thousands of midsize carrier customers nationwide. The benefits of price cap regulation are well-understood by carriers, economists, and the Commission alike. Price caps replicate the efficiency incentives of a competitive market, and ratchet rates progressively downward.

Although price caps regulation won't work for all of our companies, it would make sense for some. Nevertheless, the Commission's rules prevent us from experimenting with price caps in this manner, and forbid us from leaving the price cap system if we guess wrong, all based on outdated hypotheses about what might happen if we were allowed to convert individual companies from rate-of-return regulation to price caps. Contrary to these regulatory fears, no cost shifting between rate-of-return and price cap affiliates would occur because, as separate affiliates, such action would be readily detectable. In addition, any carrier attempt to "game the system" using these rules would quickly backfire. Actual or threatened competition makes such activity too risky—a carrier that tried to manipulate its rates in that way would lose customers to a competitor.

Far from serving the public interest, these rules deny us regulatory flexibility that could benefit us as a carrier, long-distance carriers to whom we provide access services, and our business and residential customers alike. If we had the type of flexibility that H.R. 3850 would grant, we could bring the benefits of price caps to many of our customers.

CONCLUSION

In sum, Mr. Chairman and members of the Committee, I urge you to press forward with the regulatory and FCC reform efforts reflected in the legislation before you today. The changes it would make are essential to permit carriers like CenturyTel to compete in today's new world of telecommunications, both to grow outside of our traditional local exchange regions, and to deploy DSL Internet access and other advanced communications services to our customers.

Mr. Chairman, I am not going to pretend that reducing regulation alone is enough to ensure rapid deployment of fast Internet access to all parts of this country or all of my companies' rural customers. It isn't enough. Our companies have a lot of work to do to deploy new facilities and roll out new DSL and other broadband services. In addition, universal service mechanisms will have to play an important role in providing broadband access to all Americans. Congress, too, should promptly consider proposals to provide tax incentives for broadband investment in low density, high cost rural markets. Rural and suburban companies desperately need the regulatory certainty and financial stability that we do not have now. This legislation is an important piece of the puzzle for my company, though, and I urge you to move it forward.

Thank you for the opportunity to appear before you today, and I look forward to responding to your questions.

Mr. TAUZIN. Mr. Cole, thank you very much. We have time for one final presentation and then we will have to take a break. We have two 15-minute votes on the floor, so we will hear from our last witness and then we will all break and go vote and come back in about a half hour.

Last will be Mr. John Sumpter, Vice President Regulatory Affairs of Pac-West Telecom in Stockton, California.

Mr. Sumpter.

STATEMENT OF JOHN SUMPTER

Mr. SUMPTER. Thank you, Mr. Chairman, and members of the committee, I appreciate very much this opportunity to speak to you today on this issue.

Pac-West is a small, competitive, local-exchange carrier created in effect by the Telecommunications Act of 1996, and we are very grateful for the opportunity you have given us to compete.

We are in Stockton, California, which is the heart of California's great agricultural area. We serve a lot of rural communities.

Our business plan was sort of the reverse of a lot of CLECs where we started in rural and agricultural areas and then spread our services into the more urban areas of California.

I am also a member of the Operating Board of ALTS, the Association for Local Telecommunications Services, which represent CLECs, about 100 of them.

ALTS does not represent IXCs, large IXCs. It does not represent any RBOCs. All of the companies of ALTS would not exist without the Telecommunications Act.

ALTS's primary mission, and a significant issue of importance to Pac-West, is to open the local telecommunications market to competition.

We support the Telecommunications Act of 1996 and we support the efforts of the Federal Communications Commission and State officials to implement that Act.

The most important means of creating the competitive local market that Congress envisioned is to ensure that the Incumbent Local Exchange Carriers, or ILECs, interconnect with the new entrants and make available to competitors the critical components of their network on a wholesale basis.

In other words, our principal focus is to make sure that the ILECs provide the wholesale components that will allow us to build new technologically advanced networks.

We are less concerned with the regulation of retail rates. Our view is that competition, once it is established, will keep retail rates low and affordable without the need for detailed rate regulation.

However, market forces will only restrain rates and spawn new services if competitive providers can interconnect and get access to essential unbundled network elements of the monopoly telephone company networks on a wholesale basis.

We are concerned about some of the provisions of H.R. 3850 that might weaken the prospects for local telephone competition.

On the other hand, we have no disagreements with other provisions of the bill that have little or no effect on competition such as those that streamline and remove unnecessary and burdensome regulatory requirements.

Our views on this bill are colored by our experience in the marketplace. Many CLECs are working hard to bring competition to suburban and rural markets. We are confident that competitors and small and mid-sized ILECs alike are striving to provide broadband services to rural consumers as quickly as possible.

However, many CLECs have had a difficult time entering the markets served by small and mid-sized ILECs. Many CLECs are not able to obtain authority to offer service in areas served by the small and mid-sized carriers.

The Telecommunications Act of 1996 already permits ILECs with less than 2 percent of the Nation's access lines to avoid many of the unbundling and pro-competitive requirements that currently apply to the larger ILECs.

There is no reason for Congress or Federal or State regulators to deny consumers served by mid-sized or small telephone companies the benefits of competitive choice.

The record is clear. Competition produces lower prices, higher quality services, faster Internet access services, and greater customer responsiveness.

Rural consumers deserve to receive these benefits as much, if not more, than urban consumers.

Remarkably, the legislation under consideration today may make it even more difficult to compete in these markets. This is because the bill would remove some of the enforcement power of the FCC and State regulators to enforce the procompetitive provisions of the law.

For instance, Section 4 of the bill directs the FCC to adopt separate, less burdensome rules for ILECs with less than 2 percent of the Nation's access lines.

This provision would apply to all the pro-competitive provisions of Section 251[a][b] and [c] of the Communications Act.

Thus, this provision would likely reduce the interconnection and unbundling obligations for small and mid-sized ILECs.

Finally, we are somewhat concerned about the strict time deadlines suggested by the legislation on the FCC's merger review. Perhaps a longer time would be more appropriate.

While we do not oppose the provisions that deal with cost allocation manuals and the like, the committee should consider accompanying these regulatory initiatives with provisions designed to improve their prospects for competition.

Thank you.

[The prepared statement of John Sumpter follows:]

PREPARED STATEMENT OF JOHN SUMPTER, VICE PRESIDENT—REGULATORY, PAC-WEST TELECOMM, INC.

Mr. Chairman, members of the Committee, my name is John Sumpter. I am the Vice-President—Regulatory for Pac-West Telecomm, Inc. a competitive local exchange carrier (CLEC) operating primarily in the Western part of the U.S. Pac-West provides local telephone service to business and residential subscribers. Pac-West also provides services to Internet service providers (ISPs). While most of Pac-West's business is located in Northern California, Pac-West plans to operate in 10 states in the Western U.S. by the end of 2000.

I am also a Member of the Operating Board of the Association for Local Telecommunications Services, known as ALTS. ALTS is the leading trade association representing facilities-based competitors for local telecommunications services. ALTS represents approximately 100 CLECs, most of whom were founded and started to build competing local telephone networks after the passage of the 1996 Telecommunications Act. (ALTS does NOT represent either the Bell Operating Companies or the major long distance companies.) In short, ALTS represents exactly the kind of entrepreneurial new companies that Congress sought to foster when it passed the 1996 Telecom Act. Our companies would not exist today if Congress had not passed that Act, and for that we are enormously thankful to you, Mr. Chairman and all the Members of this Committee.

Mr. Chairman, you have asked me to testify concerning H.R. 3850, the "Independent Telecommunications Consumer Enhancement Act of 2000." I have several specific comments to make concerning the provisions of this legislation. Before doing so, I would like to summarize my principal message:

ALTS' primary mission, and the issue that is of greatest importance to Pac-West, is to open the local telephone market to competition. We support the Telecommunications Act of 1996 and we support the efforts of the Federal Communications Commission (FCC) and state officials to implement that Act. The most important means of creating the competitive local market that Congress envisioned is to ensure that the incumbent local exchange carriers (ILECs) interconnect with the new entrants and make available to competitors the critical components of their network on a wholesale basis. In other words, our principal focus is to make sure the ILECs provide the wholesale components that will allow us to build new technologically-advanced networks.

We are less concerned with the regulation of retail rates. Our view is that competition, once fully enabled and vibrant, will keep retail rates low and affordable without the need for detailed rate regulation. However, market forces will only restrain rates and spawn new services if competitive providers can interconnect with and get access to the essential unbundled network elements of the monopoly telephone company networks on a wholesale basis at cost-based rates.

We are concerned about some provisions of H.R. 3850 that might weaken the prospects for local telephone competition. On the other hand, we have no disagreement with other provisions of the bill that have little to no effect on competition, such as those that streamline and remove unnecessary and burdensome regulatory requirements on carriers.

Our views on this bill are colored by our experience in the marketplace. Many CLECs are working hard to bring competition to suburban and rural markets. We are confident that competitors and small and mid-sized ILECs alike are striving to provide broadband services to rural consumers as quickly as possible. However, many CLECs have had a difficult time entering the markets served by small and mid-size ILECs. Many CLECs are not able to obtain authority to offer service in areas served by these small and mid-sized carriers. Even when authorized, CLECs do not have access to the universal service subsidies that are made available to the ILECs. Moreover, the CLECs often encounter the same difficulties obtaining unbundled loops and collocation from small and mid-sized ILECs that CLECs encounter with the Regional Bell Operating Companies and GTE. The result is that consumers in areas served by these small and mid-sized carriers are not able to benefit from the growth of competition as quickly as consumers in urban areas.

The Telecommunications Act of 1996 already permits ILECs with less than 2% of the nation's access lines to avoid many of the unbundling and pro-competitive requirements that currently apply to larger ILECs. (As a footnote, it appears that the decision of the 8th Circuit Court of Appeals earlier this week may make it even easier for small and mid-sized ILECs to obtain the exemptions from the pro-competition provisions of the 1996 Act.) This is unfortunate. Whether or not the ILEC is large or small, and whether or not it serves a large or small geographic area, every ILEC that possesses a monopoly over local telephone service should be required to open its network to competition. There is no reason for Congress or federal or state regulators to deny consumers served by mid-size or small telephone companies the benefits of competitive choice. The record is clear—competition produces lower prices, higher quality services, faster Internet access services, and greater customer responsiveness. Rural consumers deserve to receive these benefits as much if not more than urban consumers.

Remarkably, the legislation under consideration today may make it even MORE DIFFICULT to compete in these markets. This is because the bill would remove some of the enforcement power of the FCC and state regulators to enforce the pro-competitive provisions of the law. For instance, section 4 of the bill directs the FCC to adopt separate, less burdensome rules for ILECs with less than 2% of the nation's access lines. This provision would apply to all the pro-competitive provisions of sections 251(a), (b), and (c) of the Communications Act. Thus, this provision would likely reduce the interconnection and unbundling obligations for small and mid-size ILECs.

Furthermore, the bill proposes a new section 287 of the Communications Act that would grant the small and mid-sized ILECs pricing flexibility, and pricing deregulation, when the ILEC self-certifies that another carrier has entered the geographic area on either a facilities-based or resale basis. In other words, as soon as a competitor serves a single customer, the ILEC would be able to have pricing flexibility, or pricing deregulation (if the new entrant is another ILEC). This pricing relief could cause substantial harm to competition and consumers. This provision would permit a carrier with 99.99% of the market to raise prices to captive customers, and to drive competitors out of the market by lowering prices below costs to the customers targeted by a competitor.

The FCC already has the authority to implement pricing flexibility under section 10 of the Communications Act when it is in the public interest. If Congress wishes to change this standard for determining when a market is sufficiently competitive to justify such pricing flexibility, we would be glad to work with Congress to change that standard. However, the standard set by this bill (the provision of competitive service to a single consumer) would allow pricing flexibility well before competitive pressures are sufficient to restrain prices.

Finally, we are somewhat concerned about the strict time deadlines suggested by the legislation on the FCC's merger review authority and for petitions for waiver or for reconsideration. We support time deadlines on FCC rulings; the Commission should not be permitted to string out its review process for months on end. Nevertheless, the bill's time deadlines (45 days for mergers, 90 days for petitions for waiver or reconsideration) may be too difficult to meet. If the FCC does not meet the deadline, the merger or petition is automatically approved. If the FCC meets the deadline, it is likely to be forced into a hasty decision that may not be well-reasoned and may not survive judicial review. We suggest that the Committee consider extending these time deadlines to 180 days maximum.

ALTS and Pac-West are not as concerned about other provisions of the legislation, such as those removing the filing of cost allocation manuals and the provisions allowing the small carriers to choose price cap regulation. These provisions affect the FCC's ability to monitor the rates charged by the ILECs. If there are other means of protecting consumers from rate increases that are less burdensome to the small and mid-sized ILECs, then the FCC and state regulators should be permitted to rely upon these other measures.

While we do not oppose these provisions, the Committee should consider accompanying these deregulatory initiatives with provisions designed to improve the prospects for competition. In other words, if Congress seeks to reduce the regulation of retail rates charged by small and mid-sized ILECs, Congress should also consider measures to stimulate greater competition in these markets so that consumers served by these carriers will also receive the lower prices and greater service innovation that competition can produce.

I thank the Committee for the opportunity to testify today.

Mr. TAUZIN. Thank you, Mr. Sumpter.

We will take about a half-an-hour break. We have got——

Mrs. CUBIN. Mr. Chairman, if I might?

Mr. TAUZIN. Yes.

Mrs. CUBIN. I have another bill that I have to Chair the hearing on to start at 1:30, so I was wondering if we could make the 15-minute vote and then vote quickly and come back and I could do my questioning and then——

Mr. TAUZIN. You will be up first, Mrs. Cubin.

Mrs. CUBIN. I cannot have two bills at the same time without me there.

Mr. TAUZIN. I know, it's tough around here.

Mrs. CUBIN. You're right.

Mr. TAUZIN. Why not?

We have about 10 minutes left to go on this vote, and the other vote will start—we will get back here in about 20 minutes let's say.

And if I am not back here before you are, Mrs. Cubin, start it up.

Mrs. CUBIN. I will. Thank you.

Mr. TAUZIN. All right. The committee stands in recess.

[Brief recess.]

Mr. TAUZIN. The meeting will please come back to order.

When we left, the witnesses had completed their statements and the Chair will now recognize himself and other members—well, let me recognize the gentlelady from Wyoming, first, since she is here.

Mrs. CUBIN. Mr. Chairman, that would be fine if you go right ahead.

Mr. TAUZIN. Well not at all. I know you have other things to do, and I want to accommodate you, Barbara, so you are up first.

Mrs. CUBIN. Thank you.

First of all, I do appreciate the testimony from all of the witnesses here today. There are a few points I want to make based on not only the witnesses testimony but also on some of the reservations that members expressed about the bill.

First of all I want to make it absolutely clear that there is nothing in this bill that prevents the Commission from getting any information any time that they need.

You know there are a lot of times when I think it is a disadvantage to me because I am not a lawyer, and so political process gets kind of tied up with procedure and those kinds of things, but I am a chemist and so I have a background in statistics as well.

I happen to know that the information that is garnered from some of these 2 percenters in the information that they submit in CAM and ARMIS reports, and the others, is so statistically insignificant that it would have to be thrown out when policy decisions are made.

So I think that is one important point to make. But that is all aside because you can get the information, the Commission can get the information if they need it. They just don't necessarily need to require it in such a comprehensive and costly form.

Another point that I wanted to make was about the pricing flexibility that the 2 percenters would be able to adjust their fares in 1 day. Well 90 percent of the providers can do that now.

So why remove that? Why not the 2 percenters?

Another thing is mergers. I realize that the mergers and the time it takes, that that is a difficult point. I am not saying that necessarily 45 days is the right number of days, but what I am saying is these people have a right to get a decision made.

Most of the time these mergers—in fact, I think all the time that I am aware of—these mergers are one 2 percent company merging with another 2 percent company resulting in another 2 percent company.

So the information is not complicated. It is not detailed. To my knowledge, the FCC has never denied one. So I just think that 45 days is not an unreasonable amount of time to get this done.

There are a lot of other regulatory problems that we could have identified, but we identified these reports, the problem with mergers, and the pricing flexibility and the deregulation when in fact there is competition in place where an investment has been made, and so they are not going anywhere. The competition is there; will remain there; why not let the 2 percenters do what the other CLECs can do.

So with that, I would like to start my questioning with Carol Mattey. I certainly do want you to know that I appreciate the work that you have done to move these issues forward, and we will be glad to work with you to try to get this done.

I absolutely think the legislation needs to be here, though, because I think people are not necessarily like me in temperament but they are like me in, you do the things that are aggravating you the most.

So I think that we have to do this so that we can get this accomplished. I know you intend to do it, but it is the time that is a problem with me.

In your testimony regarding Section 281 of the bill you mention that the FCC will not be able to receive data from the 2 percent carriers such as broadband deployment reports.

I must say that that never was the intention of the bill. I am afraid that your statement kind of missed the mark in that area. It was not ever intended to keep information from you for regulating or receiving the information that you need to do your job, and especially when it comes to broadband deployment.

But this bill is about your trying to think of ways that smaller companies can provide you with the information that you really need in a more appropriate and less burdensome manner given their relative size.

In fact, I have information that indicates that CAM costs for RBOCs are about four cents per customer, and for 2 percenters $3 per customer. Those are the kinds of things I would like you to be looking at.

So these are just suggestions. Couldn't you get more general information from 2 percenters and more detailed information from the larger companies which serve 92 percent of the customers?

It seems to me that that would be a good base of information. Or, couldn't you require 2 percent carriers to report annually while the larger carriers could report semi-annually?

Or why not give smaller carriers a longer time to submit their information?

I just think we need to be creative on ways to lessen their regulatory burden. Do you see a problem with any of those suggestions?

Ms. MATTEY. We certainly are open to thinking through and discussing further all of those suggestions.

I want to clarify for the benefit of the committee that not all companies file the CAM filings that you referred to. Presently there are over 1200 carriers that fit the category of 2 percent carriers.

Today, under the current regulations, only 8 of those 1200 carriers actually file the CAM report that you showed the committee.

So I would share your concern if all 1200 of them were filing that big report, but as it is today, the Commission already has recognized that, what I would call the really small companies, which are the bulk of the 1200, do not need to file that sort of report.

And as I alluded to in my testimony, the Bureau is preparing to recommend to the Commission that we do a rulemaking. In fact, the Bureau believes, the Common Carrier Bureau, believes that the CAM reports do not need to be filed any longer and we would be recommending that the 2 percent companies file a certification that they are in compliance with our cost allocation rules.

So that is an example of an area where we hope to be moving forward in a very constructive way.

With respect to the financial reports that——

Mrs. CUBIN. Could I ask you a question about that first?

Ms. MATTEY. Sure.

Mrs. CUBIN. That is great news. Can you give me an idea of when that will be?

Ms. MATTEY. Well I can tell you when the Bureau hopes to make the recommendation, but obviously when the Commission adopts it is subject to the Commission. But we are hoping to be making the recommendation in the early fall.

Mrs. CUBIN. That is great. So my response would be that I would really like the legislation to stay in place maybe to help boost that process along.

Ms. MATTEY. And I must confess, with respect to eliminating the CAM filing, if you were to enact that particular provision, it would mean we would not need to do the rulemaking, and that takes time and resources as well.

So I do not object to that.

Mrs. CUBIN. Good.

Ms. MATTEY. I mean if you addressed the elimination of the CAM filing. But the one thing I would suggest that you think about is at least having some sort of provision that there be a certification that the cost allocation rules are being complied with.

So that is just one suggestion.

Mrs. CUBIN. Good.

Ms. MATTEY. With respect to the financial reports, you showed the committee the big fat reports in that folder. Those financial reports are not filed by all 1200 companies. Approximately 55 out of the 1200 currently file those financial reports, and the remainder do not file those financial reports.

And again as part of the rulemaking that the Bureau is preparing, we would like to recommend to the Commission that we eliminate those financial report filings and instead have basically a one-page summary financial report because we think there is some baseline information that the Commission needs in order to have an assessment of what carriers across America are doing, but we do not need as much information.

So again, if you would consider that sort of tailoring just to have some sort of one-page summary or something, that would be something that we are very open to talking about.

Mr. TAUZIN. We are making a lot of progress here, Barbara.

Mrs. CUBIN. Really. Those are exactly the kind of things that we hope to achieve.

Ms. MATTEY. Yes. I mean we have been actively thinking about this, and I know you hope that the legislation is spurring us to think about it, but indeed we were actually thinking——

Mrs. CUBIN. You have already been doing it.

Ms. MATTEY. [continuing] about it. This is something that we had started working on early this year. And so the legislation and our thought process is sort of moving along in a parallel timeframe.

Mrs. CUBIN. Well I really do appreciate that and would like to offer any assistance that you might need from this end. I would really like to do that.

Let me—I cannot go through all these questions, but I would like to submit them not just to Ms. Mattey but to the other members of the witness panel today, too.

In your testimony, and it was mentioned otherwise too, that the 45-day deadline, that you had a problem with that. I wanted to note that even Mr. Sumpter favors the concept of a merger review deadline.

Apart from the actual number of days, I have a more basic question. Is it warranted, do you think, to set a shorter deadline for action on the simpler mergers between smaller companies?

Ms. MATTEY. That is Mr. Bird's question.

Mr. BIRD. I will take that question.

I think very often mergers between the smaller companies will take a shorter period of time.

Mrs. CUBIN. Shorter? Help me with that. Because some of these have been pending a year, months, years, so just help me with what you mean by "shorter."

Mr. BIRD. I do not know that any 2 percenters have taken that long. There really have not been that many mergers among the 2 percenters.

The one that was referred to in Mr. Cole's testimony around 1996 came out at an unfortunate time in some ways. It was right after the Commission had addressed the very large merger of Bell Atlantic/Nynex.

It was a brand-new concept and a lot of the structure for analysis that was in the Bell Atlantic/Nynex opinion was applied in this context where it comes to the basic conclusion that the competitive concerns were not really there. And because that was the first case, there was a much more extensive analysis.

I think if you look at the more recent cases, last year the Al-Tel/Alliance Merger, the competitive analysis was three pages and basically found that there were no major problems.

Mrs. CUBIN. And how long did that take for the company to receive that?

Mr. BIRD. It was submitted in January and the decision was adopted in June. But the major period of time on that one was not spent on those Bell Atlantic/Nynex issues. I think there were waiver issues that were involved.

And that is one thing that I wanted to mention with respect to the mergers. The mergers often involve questions of waiver of one or another of the Commission's rules and, depending on which rule it is and how much experience there has been with the waiver of the rule and what the circumstances are, those can take a fair amount of time to decide.

That is where I think we try to decide these cases, and the Commission has taken steps to speed up its review.

Mr. TAUZIN. What is the average time right now?

Mr. BIRD. The average time for?

Mr. TAUZIN. To handle one of these reviews.

Mrs. CUBIN. To review a merger.

Mr. BIRD. Well it depends on the size of the merger. We have made a commitment to reach a conclusion in even the most complex mergers within 180 days of the time that it goes out for public notice.

Mr. TAUZIN. Barbara, if you would yield again, Mr. Sumpter, didn't you recommend 180 days in your statement?

Mr. SUMPTER. Yes, Mr. Chairman.

Mr. TAUZIN. And you are saying you can do it in 180 days, even the most complex?

Mr. BIRD. We have made the commitment to attempt to do the most complex ones within 180 days from the time that they go out on public notice. And we qualified that with only two qualifications.

One is there are certain things that are within our control in terms of these merger applications, things that the Commission can do and should do within the time period that it sets for itself.

There are other things that are not completely within our control that occur with some frequency in merger applications. One of those is if we do not get sufficient information from the applicants on one point or another.

Mr. TAUZIN. Barbara, if you would yield again——

Mrs. CUBIN. Sure.

Mr. TAUZIN. [continuing] One of the problems, we have got a bill moving that deals with that, and one of the problems we have found in examining this issue is that as long as that is a subjective question as to whether or not you have got enough information, that the time never tolls. You never start ringing it.

The problem of setting any kind of time limit is defining when it starts. But if you can decide it never starts because you never go out on public notice because you keep asking for more information, the applicant doesn't know what you want when he first files, the legislation and time limits are meaningless.

So I suppose what I would like to ask you, if you don't mind, Barbara, is the bill we have offered, the Barrett-Pickering bill, basically says that the time starts the moment the applicant gives you all the information that you say up front you need in a merger application.

And once you have that information, if he knows what it is and does not give it to you, that is a different matter, but if you tell him what is required at the get-go and he supplies it, the timing begins to run.

Would you accept such a provision?

Mr. BIRD. This is for the more general—these questions frequently do not happen too much with the 2 percenters, but I think that would go a long way to addressing the concern we had that an applicant may come to us with an incomplete application.

Mr. TAUZIN. Yes.

Mr. BIRD. We think it is very important that applicants know exactly what is expected of them, and in the guidelines that we have put forth on our web page we suggest that the applicants get in touch with us before they file the application, and we have done this with a number of people, so they know what is required and we can get that together, and things move rapidly at that point.

Mrs. CUBIN. That has not been a problem that I have heard about, of knowing what to submit, but certainly we need to know when the clock starts ticking and when it should end.

But just to follow up on this a little bit, Mr. Darby, I just have one more question after this one, but you discussed in your testimony the cost of uncertainty.

Like my bill, H.R. 4019 that this subcommittee has already marked up, H.R. 3850 proposes deadline for merger reviews as we have said already.

I have always believed that we need more certainty in that time. So could you tell us what are the costs to 2 percent carriers of merger review without deadline of any kind?

What kind of not only inconveniences and delays in being able to offer more advanced services, but what are those direct costs to you?

Mr. DARBY. Sure. I would be happy to. Thank you.

It is important to understand that mergers or acquisitions have a sound economic basis to the stockholders who are engaged in it. Otherwise, they would not be considering it.

So what happens is, if there is a proposed merger the benefits of that merger are delayed. Okay? So in the first instance there is a cost of delay. But there is in a sense a discriminatory cost of delay because not all merger applicants, not all merger candidates, have to go through these kinds of processes.

That is to say, there are alternatives for an unregulated company to merge with another, or acquire another unregulated company.

So if I am looking as a potential acquirer of let's say resources that will give me access to a particular market and I look at a cable company, a wireless company, a satellite company, or another company that is not subject to these regulations, that is an incentive to me to avoid doing deals with these kinds of people.

So there is a discriminatory piece to it, and there is also a delay piece to it. The Bureau's response is we need more time, and I sympathize with that. These are very difficult issues many of time. But I think what is missing from that is that this is—and this is a point in my testimony—this is not a free good. Okay?

That taking more time while at the margin may create benefits for the regulatory process, it also brings about these kinds of costs.

Mrs. CUBIN. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentlelady.

The Chair recognizes the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman.

I would like to direct my question to Mr. Mueller and to Mr. Cole, and then to Ms. Mattey from the FCC.

You heard some of the questions that I raised in my opening statement, and let me direct myself toward this part of the bill.

The bill would remove the separate subsidiary requirement for long distance and other non-regulated activities.

Now we know that this requirement is intended to protect ratepayers and competitors from cross-subsidization. But at the same time, the bill removes the requirement for the companies to file what is known as the CAM, the Cost Allocation Manual, with the FCC.

Now these filings are also intended to protect against cross-subsidization. I understand that requiring both of these protections could be considered overkill. I understand that one.

But how do you justify eliminating both of them? And how can we be sure that ratepayers will be protected against the cross-subsidization if neither of these mechanisms are in place?

Mr. MUELLER. I will be happy to go first.

Ms. ESHOO. Sure.

Mr. MUELLER. Thank you for the question. I appreciate the opportunity to respond.

First of all, let me just give you some——

Ms. ESHOO. Now do you really mean that?

Mr. MUELLER. Yes, I do.

Ms. ESHOO. We always say things like that, and then. . .

Mr. MUELLER. Let me just give you an example that I think might help the committee understand the situation in Cincinnati.

I am president of the Telephone Company. Some of the things that I do not have under my direct control are wireless, long distance, two subsidiaries that we have to have separate subsidiary requirements. And so they are separated subsidiaries.

Because we have those separated subsidiaries, we have general managers for those businesses. We have additional costs. We have the costs of creating separate books and all of those kinds of things which are passed on to consumers and businesses in our market.

There is really no need for that kind of separate subsidiary requirement when you have a company that is our size.

Your second point was about well what if we take away these kinds of requirements and you do not have to file any cost allocation materials?

The reason—let me put it this way. At the FCC we file a lot of cost material for our states. We break that cost material down between the States of Ohio and Kentucky.

We provide that information to the FCC, and honestly we do not know whether or not that material is even used for any purpose other than filing what you saw.

We also file similar materials——

Ms. ESHOO. They can tell us that. But if you remove both—I mean I acknowledge that if you have both of them on it may be overkill, but how are we guaranteed?

I mean how do we know?

Mr. MUELLER. We also file similar materials at the State level, and the states review our businesses on an ongoing basis. The Public Utilities Commission of Ohio, Public Service Commission of Kentucky, and there are, I would say, some onerous, some not onerous restrictions upon us in the states. And that is true across the country, and many states are different in terms of how they regulate the companies within those states.

So I do not want anyone to get the impression that because this bill is passed in its current form that regulation goes away. That is clearly not the case at all.

We clearly would still be a regulated organization, and all 2 percent companies would be.

Ms. ESHOO. But the bill lifts both. And so my question—I mean you are telling me what you do.

Mr. MUELLER. Um-hmm.

Ms. ESHOO. But I am asking you, given that the bill says both are gone, how do we know that ratepayers are protected against the cross-subsidization?

Mr. MUELLER. Congresswoman Cubin also responded to that, I believe, by saying that the FCC still has the authority to ask at any particular point in time to any of the companies for this information.

It just would take away the requirement that we provide this information on an annualized basis.

Ms. ESHOO. But if they ask and you give the information, do they have the hands to do anything? Well maybe we can get Mr. Cole to answer, and then maybe the views of the FCC.

I appreciate your response.

Mr. COLE. I would like to talk a little bit, and I believe very much for me that the issues are on point. Ours is even a more complicated situation in that we have 20 states and the allocation process is extremely burdensome, but it is a very complicated process for us.

But again I believe this legislation does not alter any of the cost allocation requirements that we as companies are required to follow as far as allocating our costs. So it does not change anything as to how we do business or how we allocate costs among regulated and non-regulated businesses, whether they be separate entities or not.

It only says that we would not be able to—or would not be required to produce this annual CAM and ARMIS filings that are very extensive.

We would still be required——

Ms. ESHOO. Let me ask the question another way.

Mr. COLE. I'm sorry.

Ms. ESHOO. How is the ratepayer guaranteed that these protections that you are referring to by intent anyway will be honored?

Mr. COLE. I think one, I believe from the FCC staff, one of their recommendations, which as far as filing just an annual statement that we are complying with cost allocations requires us to submit to the FCC that we are following these rules and adhere to those.

The other is, there is also State regulatory review of those same allocation methods as they have questions. And again, if there are any questions from the FCC or other bodies for us to sit down and show how we are following those processes, we would be doing that at that time.

This is really just saying it is doing away with the filing requirement, not that any of the rules of what we have to follow change as far as the ongoing business practices and how we account for costs.

And I do believe that the requirement for an annual certification that we are following those rules would be a much less burdensome——

Ms. ESHOO. I think I am running out of time, but I appreciate your answer.

Mr. Chairman, can Ms. Mattey—I will not say anything else—can she respond?

Mr. TAUZIN. Of course. Absolutely. Ms. Mattey?

Ms. MATTEY. Well one thing, obviously I agree with the gentlemen that it would be important that it be clear that even though a carrier would not file a report detailing how it complies with the FCC's cost allocation rules, there should be no misunderstanding that there would still be an obligation to comply with those cost allocation rules. That is critical to make sure that ratepayers, that the consumers are not bearing the costs of competitive ventures or other ventures.

So I think that is a very important thing that we need to keep in mind.

Ms. ESHOO. With the permission of the Chair, how would the FCC know that they are complying, then? Is that enough for you?

Ms. MATTEY. Well——

Ms. ESHOO. I mean somewhere, somehow, everyone is saying that with what they would still have to do, be required to do, so that there is a protection, so that the ratepayer is protected, my question still is after all of what you have said——

Ms. MATTEY. Well it certainly would be more difficult——

Ms. ESHOO. [continuing] would they be——

Ms. MATTEY. [continuing] for us to figure out whether there is a need for any kind of enforcement action, because if you eliminated both the separate affiliate requirement and the cost allocation manual filing requirement simultaneously, it would leave us with a lot less information on which to make any kind of informed judgment.

You know, these are things we would need to think through if this legislation proceeds, what the ramifications would be.

Ms. ESHOO. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentlelady.

The gentleman from Illinois is recognized, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Ms. Mattey, the many different issues we have addressed through this subcommittee, especially with the FCC, always has to do with the time of rendering some type of ruling. I know I have written—I think Senator McCain got in trouble during the campaign for writing letters asking for an expedited, or at least a timeframe by which filers would get a response.

Mr. TAUZIN. If the gentleman would yield, I remember when he got criticized for that. I invited the press to come check my files. I had probably a hundred times more letters than him. But go ahead.

Mr. SHIMKUS. And I have not been here nearly as long, but I know I have a few myself. And the issue has never been—the issue I think in all those letters has never been to encourage the FCC or move the FCC in moving in a particular direction; it has always been with the intent of the FCC to make a decision.

Because I think our panelists here understand that time is money, and that they are looking for in the terms of another hearing I had this morning, some legal certainty by which to make business decisions whether to expand into a market or whether to not.

I think in my fourth year here that has just been a constant crescendo from this committee to the FCC. So in reference to this bill and its timeframe, that is the premise by which legislative language has been put in there. It is not just with the 2 percenters; it is with everything we deal with in addressing the FCC.

So if we are going to—so I do not know how a bill would move out of this committee without some type of timeframe in there. So the question would be. If there is going to be a time line, or some definitive fish-or-cut-bait make a decision timeframe, what should that be?

Ms. MATTEY. Well I think that the time line really needs to depend on the circumstances. For instance, petitions for reconsideration in rulemaking proceedings, even though they may be filed by a small company, may raise broad policy issues that apply equally to the larger companies.

And if you have a short timeframe that the Commission must act on that for the small companies——

Mr. SHIMKUS. Can you define “short” and “long”?

Ms. MATTEY. Well I will tell you I think in general 90 days for Commission action on petitions for reconsideration of rulemakings is too short, because rulemakings by definition have to be adopted by the full Commission.

Mr. SHIMKUS. And what is too long?

Ms. MATTEY. Well again it depends on the circumstances. I agree with the gentleman from ALTS that something more on the order of 180 days would be a more reasonable timeframe, but again it depends on the circumstances because there is a difference between actions that we can do at the Bureau level and actions that can be done by the full Commission, and with the full Commission things just take longer.

But also I just was trying to make the point that issues that may raise broader policy issues take longer because you have to think about the interrelationships of those issues and how they impact on other carriers.

Mr. SHIMKUS. Thank you.

My point in hearing the answer is, you can define a time that is too short but you cannot define a time that is too long. You can define a time, that 90 days if not enough time for us to do it, but you cannot give me a time that this is in excess of what we need to get it done.

Ms. MATTEY. Oh, I'm sorry. I misunderstood your question.

Mr. SHIMKUS. No, but——

Ms. MATTEY. I thought you were asking what a reasonable time was. I'm sorry I misunderstood.

Mr. SHIMKUS. Well in essence I was, and I did not get an answer.

Ms. MATTEY. I thought I said that I agreed with the gentleman from ALTS that 180 days——

Mr. SHIMKUS. Okay, on the record 180 days would be——

Ms. MATTEY. I said that would be——

Mr. SHIMKUS. Could I have Mr. Darby? Could you respond?

Mr. DARBY. Sure. Let me just talk about 180 days, and I certainly appreciate the concern from a regulatory point of view that you want to get the policy right.

But getting the policy right to the extent it takes time might very well keep a lot of good things from happening in the private sector.

As a former banker, if I were looking at a property I wanted to acquire and I knew I could prove synergies for my shareholders, and the shareholders of the companies, and it would create value and growth for the consumers going forward, the prospect of spending 180 days to get an uncertain review would certainly be a turnoff.

I think that is what we are hearing. And again I am sympathetic to the notion that to get the policy right you need more time, but maybe you could do it with a little less time and take some chances with the policy and let some good things happen in the private sector.

After all, this is not the same as the telephone sector was 20 years ago. We hear a lot about Internet time and the pact at which these deals are made, and the pace at which these evaluations are made.

A hundred and eighty days, with all due respect to your need to get it right, is just far too long.

Mr. SHIMKUS. And I do have some 2 percenters in my District, and they really do an invaluable service. They have provided, and they are trying to reach out in other areas, but I know of Alaska Telephone has had a decision pending for over 2 years, and it is still pending.

Could you comment on that?

Ms. MATTEY. Well I am sorry I am not familiar with that and cannot respond without more details on that, but——

Mr. SHIMKUS. Could you——

Ms. MATTEY. [continuing] I would just——

Mr. SHIMKUS. Ma'am—Mr. Chairman, if I could ask for the FCC to give us a response on Alaska Telephone and why the——

Mr. TAUZIN. The gentleman is suggesting you do it in writing.

Mr. SHIMKUS. In writing, so that we can get a further clarification.

Ms. MATTEY. I would be happy to provide something in writing if perhaps you could give us a little more detail. Alaska, involving what?

Mr. TAUZIN. How much time do you need? Do you need 180 days?

Ms. MATTEY. No. But we would be happy to follow up on that.

Mr. SHIMKUS. Thank you.

Ms. MATTEY. And also, just one thing I wanted just to clarify for everyone. In rulemaking proceedings we are subject to the Administrative Procedures Act requirements that we seek public comment.

In those sorts of situations, we normally provide 30 days for comment, and at least a minimum of 15 days for parties to file reply comments. So in a normal situation that takes 45 days just to get the record of what people think of what we are proposing to do.

And then, you know, again if something is going before the full Commission, normally our Commissioners expect a minimum of a couple of weeks before they will vote on something. And so if that takes, you know, just for the sake of argument, 30 days, again those two things together take up 75 days.

And then the remainder of the time obviously the Bureau is working on preparing a recommendation and revising that and responding to the parties.

Mr. SHIMKUS. And I am not belaboring the point, it is just something that really has irked myself and I think many members of this committee for a long time.

I do not think it is directed at an administrative—I just think it is directed at a bureaucracy, and hopefully we would be as vigilant should the Administrations change and there is Republicans in there, and if they are slow and will not commit to timely processing, I would probably say that this committee would be as vigilant on trying to get some legal certainty on time in response to some of these filings.

And with that, Mr. Chairman, I yield back.

Mr. TAUZIN. I thank the gentleman.

The Chair recognizes the gentleman from Tennessee, Mr. Gordon.

Mr. GORDON. Thank you, Mr. Chairman.

Let me just follow up quickly on that.

Ms. Mattey, is there a relationship between adequate staffing, adequate funding, and timely response?

Ms. MATTEY. Yes, I think there is. And I can say, just based on my own experience in the Bureau, our staffing levels are not adequate to move things along in the timeframes that are contemplated by this bill.

We have a number of matters that—I assure you I would dearly love to be able to complete them and finish them as quickly as we could, and we just do not——

Mr. GORDON. For those folks that want things to move more promptly, if they would vote for additional funding do you think that might be one way to help this out?

Ms. MATTEY. That would be.

Mr. GORDON. Okay. Now let me ask also another question.

In your statement you said that H.R. 3850 could be interpreted to say that the FCC would not have the authority to regulate the 2 percent companies in slamming and truth-in-billing.

Would you be more specific about what section you are referring to?

Ms. MATTEY. Section 4 of the bill, which would add a new Section 281, requires the Commission to adopt less burdensome requirements for the 2 percent carriers.

The bill also would allow the 2 percent carriers to seek a waiver of any regulations.

And our concern about that would be that a 2-percent carrier would seek a waiver of the requirements that it comply with our truth-in-billing rules and our slamming rules. And as I read the bill, the Commission could not enforce those rules pending action on the waiver petition, and the legislation mandates that we adopt less burdensome requirements.

Mr. GORDON. Just because they petition does not mean—I mean I think no one would suggest that you should relieve them of slamming and truth-in-billing. I mean they could petition for relief for anything, I assume.

Ms. MATTEY. Right. I was——

Mr. GORDON. I mean even without this bill, they could still petition for that?

Ms. MATTEY. Of course. Of course.

Mr. GORDON. So how are things different?

Ms. MATTEY. Well again I was just focusing on the language that says the Commission "shall adopt less burdensome regulations". So as I read that language, it does not allow the Commission to apply the same slamming rules and the same truth-in-billing rules to the 2 percent carriers.

Mr. GORDON. So should we say "reasonable"? Do you need report language? Would report language—I mean, I think that is very much of a stretch, but——

Ms. MATTEY. Well if I am misreading it, then I feel more comfortable.

Mr. GORDON. If there was report language, or the authors were to say to you that is not what is supposed to be included within the less regulation, then that should clear up that matter?

Ms. MATTEY. Yes. That would be helpful I think.

Mr. GORDON. Let me just I guess ask Mr. Mueller, do you read it that way? And what would be your response to the question of whether or not 2 percent companies should be relieved of slamming or truth-in-billing requirements?

Mr. MUELLER. First of all, thank you. I do not read it that way. And certainly that, as a president of a company, that would absolutely not be our intent.

I am not interested in being reduced from the regulatory requirement surrounding slamming, nor truth-in-billing. Truth-in-billing has some onerous requirements on us, but we are complying with those and plan to continue to do so, as well as continue to comply with the slamming requirements.

Mr. GORDON. So I think we can find a consensus that that clearly was not the intent of the legislation and, if necessary, can have that more specifically, or in report language so that that should no longer be a concern of the FCC.

Thank you.

Mr. TAUZIN. I thank the gentleman.

The Chair would recognize himself. First of all, let me assure you, Ms. Mattey, that in my very humble opinion if the Commission were enforcing the 14-point checklist instead of 1014-point checklist on 271s you might have enough staffing and money and time to do your other work. But that is a personal opinion.

In regards to the issue before us, however, the law defines the 2 percent company, does it not?

Ms. MATTEY. In Section 251, or the draft legislation?

Mr. TAUZIN. The current law.

Ms. MATTEY. The current law, my understanding is 251 has a suspension from 251 requirements for companies 2 percent or less, yes.

Mr. TAUZIN. So the current law recognizes that there is something magical about a 2-percent thing. Does it say anything about companies that are really 2 percent? Or sort of 2 percent? Or kind of 2 percent? Or does it address all the companies under 2 percent?

Ms. MATTEY. My understanding is the current law refers to all 2 percent companies.

Mr. TAUZIN. That's what I thought. I don't think it makes a distinction. But the Commission does. The Commission to its rulemaking, at least up to this date, has distinguished between some 2 percent companies and others.

You testified today that certain numbers of 2 percent companies have to comply with some rules, and certain numbers do not. And certain numbers have to comply with other rules, and certain do not. But the law basically says that there is a class of companies called 2 percent companies that Congress obviously intended to be treated differently than the larger ILECs.

Is that right?

Ms. MATTEY. Well the particular requirements that we have been discussing today were all adopted by the Commission prior to the passage of the law.

I agree with you that 251 does create a category of 2 percent carriers. It is not clear to me whether the law mandated that we go back and re-examine all of our existing regulatory framework to conform it to that particular——

Mr. TAUZIN. Well it——

Ms. MATTEY. [continuing] which relates specifically to local competition.

Mr. TAUZIN. If you follow Reid Hunt's argument that the 1996 Act created the capacity of the Commission to create its own legislative intent, I assume that is true. But there is a clear legislative intent in defining a 2-percent company as something that is deserving of less regulatory burdens than companies that obviously have a larger share of the marketplace and therefore should be regulated more deeply as monopolies.

I mean isn't that obvious?

Ms. MATTEY. I agree with you.

Mr. TAUZIN. That is why you are moving in that direction now, and that is why I think you have consented to some of the changes Mrs. Cubin is recommending in her legislation. I am glad to see that.

I just wanted to make the point that I think we are a slow getting there, but I think we need to get there as rapidly as we can.

Isn't the real reason why the Commission is considering doing that, and the reason for the Cubin bill, illustrated in those charts that Mr. Mueller held up earlier, the arrival of incredible and significant competition to the 2 percent companies?

Ms. MATTEY. I am afraid I don't understand the question. Could you please——

Mr. TAUZIN. Let me try again.

Isn't the whole notion of the "d" word, deregulation, less filing requirements? Less regulatory costs being imposed upon the 2 percent companies? Either your decision to change your rules in regards to what is required to be filed, or Mrs. Cubin's bill, either one? Isn't the genesis of that notion really in the fact that the 2 percent companies are, No. 1, small, smaller than the large companies by definition? And, No. 2, they are being subjected to much greater competition in their local markets than they ever were before?

Ms. MATTEY. I agree with you that as competition is unfolding in particular markets that the Commission should be thinking about, and the Bureau is thinking about, ways to deregulate.

Mr. TAUZIN. Yes. And see, here is the big problem I think. We are not only going to be faced with 2 percent companies, but eventually with the whole telephone industry. The big problem is that competitors arriving who don't have all of these regulatory burdens—and the 1996 Act anticipated that; it really begged for that. It asked the cable companies to consider getting into telephones, and it helped create CLECs, and it helped really establish the capacity of companies that were not normally engaged in voice communication to get into it, just as it told the telephone companies it is okay for you to get into other things like video and data and whatever you want to get into.

As companies do that, we still have bureaus that regulate these companies as though they were only doing what they used to do. And if you fit in that category, you are fitting into this heavy shelf regulation.

If you don't, you can be delivering the same services to the same customers in the same market now, but if you come in by virtue of having been another company you're not subject to those.

I think Mr. Darby put his finger on it. As we transition into that world, what an enormous disadvantage these 2 percent companies are going to be in.

Because, No. 1, this is a costly process for them to have to go through.

No. 2, as Mr. Darby points out, it creates a prejudicial economic situation for them.

And No. 3, it really damages them in terms of their ability to sustain themselves in a merged market, merged functional communications delivery system and marketplace.

I guess what I am saying in a nutshell is, don't you agree with us that we have got a lot of work to do, both the Commission and those of us in Congress who try to write definitions for 2 percent companies and give them meaning, to literally find the right formula over the right amount of time as competition is evident in the marketplace, to really create some more level playing field for all of the players?

And don't we really have to think about the whole regulatory structure at the FCC which was designed for a world where everybody was doing something functionally different and now they are all doing the same thing?

We are getting down to that. You needn't respond. I'm asking rhetorical questions.

But I think——

Ms. MATTEY. This is my first time here. I have to learn what to do.

Mr. TAUZIN. Unfortunately it's not my first time here. We have been through this a lot over the years. But I really think we are at a period of time when we are going to have to think out of the box on this because the marketplace is changing so rapidly.

The gentlelady from California asked you a question, and asked all of you a question, how do we know these companies will comply with cost allocation?

Well No. 1, if they certify they are and they aren't, you can always check them. You can audit them just like the IRS can. If they're not, you can rap them pretty good. And you have a habit of doing that when companies are out of compliance with you, and you should.

No. 2, there is a marketplace out there. If Mr. Mueller's companies starts subsidizing his other operations and raises the price dramatically on his services, I suspect that marketplace is going to react.

I mean the only reason we are here talking about deregulating 2 percent companies is because that marketplace is emerging. It is a competitive, vibrant marketplace in which he not only faces local competitors but now the big ILECs are coming in and challenging him.

And they are still going to be subject to all your regulations and your rules. And if he raises his prices in order to subsidize his other activities, I don't have any doubt what his customers are going to do. I know what they do in my home town. They go find another store.

That is the beauty of what we are getting into. We are getting into the place and time when there are going to be a lot of stores in town. And when there are a lot of stores in town, there is less to do for you and I, because we don't have to regulate prices and terms and conditions and cost allocations and interconnections and all the things that we have to do today in order to somehow transition from a monopoly marketplace to that vibrant, merged, consolidated and diverse and at the same time incredibly mixed multimedia communications marketplaces we are seeing developed.

So I guess what I am trying to say is that I think you are making some steps in exactly the right direction. I wish they would come sooner. And frankly I think we need to put some time limits and some definitions of when the time limit starts on these things.

I am never more frustrated with the FCC than when someone in this country of ours comes to me and tells me I can't get an answer. I'm just hanging out there. I'm hanging out there.

And, by the way, while I'm hanging out there, people show up and tell me if I hire them they can unstick me; they can get me processed. And sometimes it's not lawyers asking to be hired, it's just people who claim they have influence with you. I'm not saying they do. I'm not saying they don't. I hope they don't. But when you hang people out there, you create all the uncertainties.

You create all the problems. You create the financing problems. And you create all this vulnerability for these people. I think it is in our interest, all of our interests, for the integrity of the Commission and the integrity of the process for us to have time limits that are real; that start at a given time and end at a given time; and if you have got a reason to disapprove somebody, you say so.

And then no one can come to me and complain that I got hung out to dry and I got subject to all of this other stuff that sometimes happens that I know none of you, none of us, would approve of.

So it is a real passion with a lot of us here on this panel to try to do something about that, and we are asking your help in thinking it through and finding a way.

The transitions are always tough. Transitions to monopolies to competitive marketplace are always tough. And we are going to make some mistakes as well as you are going to make some mistakes along the way.

So we need some failsafe mechanisms. But we need to plod ahead. As Mr. Darby said, we've got to quit thinking in the 1930's. Competition is here. When competition comes, and when it comes evidently, and when it comes in buckets, we need to be quick enough and smart enough to deregulate and then stand back and let the beauty of the marketplace work always with the capacity to step in if somebody gets too big and plays unfairly.

That is my soapbox.

Let me ask my friend from Tennessee if he has any closing remarks.

Mr. GORDON. Just quickly. Again I want to thank the panel for being here today. I think we better understand this issue because of your testimony.

Ms. Mattey, I want to also thank you and the FCC for moving forward on these issues. We hope that you will continue to do that.

Clearly, as the chairman related, frustration is limbo. Normally when you contact an agency or someone, it is a very important issue to you. You know, you've got lots on your table, but it is something very important to them and they are thinking about it every day.

So every day that they don't hear something about it, it is a problem. I have had the same experiences just trying to get information from the committee.

I do think that a lot of it is not adequate funding, and I think that it is not really responsible of us on the one hand to give you a lot more responsibility, ask for a lot more, but then try to cut your funds in retaliation.

You know, you have got to do a better job of showing us how the funds can get results. Because I think things do need to move promptly.

Also just let me thank you for your testimony today. You said this was your first time. Part of the problems the FCC has here is many of the surrogates that come simply haven't been prepared and haven't done a good job.

I have come here oftentimes—not oftentimes, but on occasions willing to support the FCC and their own folks can't explain it. Hopefully you are a model of what we will see in the future.

So thank you.

Mr. TAUZIN. That was pretty sweet of you.

Let me echo that. I really appreciate you coming. It's the first time for testimony from Ms. Mattey. Thank you for your contribution. You have been very forthcoming.

And, frankly, I think you and Mrs. Cubin made some real progress here today in terms of helping us fashion a bill that will work and one that will meet your concerns. I hope we get closer as we go along, and I thank you for that.

Ms. MATTEY. You're welcome.

Mr. TAUZIN. I thank your counsel for assisting you, as well.

And I want to thank the other members of the panel. You have added to our understanding of these issues.

What I would suggest is we keep the record open for 30 days. We generally do that. Let me ask if you can, in the next 10 days, respond to Mr. Shimkus's questions about the status of the filing——

Ms. MATTEY. Can the 10 days start when he tells me which matter he's talking about?

Mr. TAUZIN. I think you can gather that information rather quickly and just let him know what the status of that filing is and why it is being held, if it is over a year, why and what's going on there.

The last thing I always request of our witnesses, if you have any additional information, or if you want to comment about something you have heard today that you disagree with, or if you think we have said something you disagree with and you want to add some testimony in the record, a good time to do it is over the next 30 days. You are welcome to do that.

Let me finally say that I think we are going to make an effort, a really big effort, next year to do more than just process reform.

We are going to talk about structural reforms at the FCC as well to see if we can't create structures, as well as processes, that work better in these transitional marketplaces and eventually will work better in a much more deregulated open marketplace.

And if we do that, if we do it properly, I think we are going to solve a lot of the resource and the time problem of the FCC. I frankly think you are spending a lot of time doing things that were probably required of you a long time ago that are not really required any more. And if you weren't doing those, there could be time to do the things that are more critical as we try to objectively and professionally think our way through this period of transition.

I would like to help put you in that position where you have the time and resources to really do it right. And so we will focus on that. And if you have any thoughts from your Bureau as to what we might do to make it a more efficient operation where you're not having to do things you shouldn't have to spend your time doing, please let me know.

I have often been very critical of the FCC as the ranking minority member Mr. Dingell has been. It is not a personal thing. I hope you understand that. Not at all. The folks I know and work with at the FCC all tend to be extraordinary people who work very hard for this government and for our country.

We differ on a lot of the policies, and that ought to be the way it is. That's the way we get it right sooner or later.

So thank you for that, and thank you for understanding that. And thank you all for your testimony today. The hearing stands adjourned.

[Whereupon, at 3:25 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Additional material submitted for the record follows:]

INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE
August 24, 2000

The Honorable ANNA G. ESHOO
United States House of Representatives
205 Cannon House Office Building
Washington, D.C. 20515

Re: H.R..3850: The Independent Telecommunications Consumer Enhancement Act of 2000

DEAR REP. ESHOO: ITTA and its member companies appreciate your interest in the issues raised by H.R. 3850, the Independent Telecommunications Consumer Enhancement Act of 2000, during the hearing held by the Subcommittee on Telecommunications, Trade, and Consumer Protection on July 20, 2000.

During the hearing you asked about the impact of granting two percent companies relief from CAM (Cost Allocation Manual) and ARMIS (Automated Reporting Management Information System) filing requirements and separate affiliate requirements. Specifically, you inquired as to whether the bill's elimination of CAM and ARMIS reporting burdens, in addition to its elimination of separate affiliate requirements, would diminish current levels of consumer protection against possible cost misallocation by two percent carriers.

There are several reasons why the passage of H.R. 3850 would not expose consumers to any increased risk of cost misallocation or improper cross-subsidization:

1. Passage of H.R. 3850 would not alter existing Commission prohibitions against cost misallocation or cross-subsidization.

Cost misallocations of this type are currently prohibited—and will continue to be prohibited were H.R. 3850 enacted into law—both by existing federal statute and Commission rules. Such misallocations would result in cross-subsidization of competitive services by regulated, local exchange services, a practice specifically forbidden under section 254(k) of the Communications Act of 1934, as amended. In addition, the Commission currently has strict and detailed cost allocation rules that govern the allocation of costs between local exchange and other services. These regulations, contained in Part 64 of the Commission's rules, 47 C.F.R. Part 64, will be left unchanged by the passage of H.R. 3850 and will continue to apply to two percent companies as well as larger companies.

Section 64.901 of the Commission's rules, 47 C.F.R. § 64.901, currently requires carriers to allocate costs between local exchange and other activities according to principles of cost causation that are both favorable to local exchange ratepayers and strictly enforced by the Commission. Among other requirements, Section 64.901 requires local exchange carriers: (1) to charge tariffed rates for services provided to a nonregulated activity, and credit the appropriate regulated revenue accounts for the tariffed value of the services provided; (2) directly assign costs to either regulated or unregulated accounts whenever possible; (3) allocate outside plant and central office equipment investments to regulated and nonregulated activities based on relative usage during the year among the preceding three years when nonregulated usage,was greatest; and (4) allocate common costs according to detailed principles.

These detailed statutory and administrative requirements would remain unchanged by H.R. 3850. Two percent companies would still have to track and allocate their costs according to the rules. The Commission would still have full access to this information whenever and however it desired to enforce its rules. H.R. 3850 would only eliminate costly and unnecessary annualized reporting requirements that consume resources that two percent carriers could be using to deploy new services to their customers and launch out-of-region competitive ventures. H.R. 3850 would shift the current regime of cumbersome prophylactic regulation to an enforcement approach, consistent with the FCC's own plan to reinvent itself for the 21st' century.

2. Passage of H.R. 3850 would not alter the Commission's existing enforcement powers against cost misallocation and cross-subsidization.

Nor does the bill reduce in any way existing federal and state authority to police and enforce the legal prohibitions against cross-subsidization. Federal officials will continue to have ample authority to investigate suspected wrongdoing. Section 218 of the Communications Act, as amended, 47 U.S.C. § 218, gives the Commission sweeping authority to require from carriers "full and complete information" that it deems necessary to carry out its mission. This provision, and its grant of such broad investigative power, would remain unchanged after the enactment of H.R. 3850. The Commission would still be free to investigate any carrier and to require the carrier to provide any and all necessary information, including information identical to that required by the current ARMIS and CAM requirements.

Moreover, federal enforcement in this field is not exclusive: Both the Communications Act and Part 36 of the Commission's rules provide for concurrent authority at the state level to enforce these cost allocation rules—authority that also would not be affected by granting the relief H.R. 3850 proposes in these areas.

3. Both the Commission and Congress have recognized that imposing CAM/ARMIS and separate affiliate requirements on two percent carriers is not essential to ensuring consumer protection.

The Commission itself has largely not relied on CAM/ARMIS and separate affiliate requirements to regulate two percent carriers. For example, until relatively recently, the Commission only required large carriers to structurally separate their service offerings. The Commission only extended these requirements to two percent companies in two orders released in 1997 as part of an effort to formulate a "one-size-fits-all" policy. No examples of abuse by two percent companies were cited either in the Commission's orders or its underlying records.

When Congress addressed the issue of structural separation requirements in the Telecommunications Act of 1996, it saw no compelling need for imposing these requirements on two percent carriers. Congress effectively drew a size-based distinction similar to that being proposed in H.R. 3850. Section 272 of the Act requires structural separation for interLATA and certain other activities of Bell Operating Companies but neither Section 272 nor any other portion of the 1996 Act imposes such obligations on smaller carriers. Moreover, Section 272 contains a provision that sunsets the requirement three years after a BOC first begins providing enters into long distance service (Section 272(f)(1)). Ironically, no such mandatory sunset exists in the Commission's rules as applied to two percent carriers.

Likewise, the Commission appears to treat two percent companies' CAM and ARMIS reports as non-essential regulatory tools. The majority of two-percent companies are not currently covered by the requirement to file CAM and ARMIS reports and there is no indication that any of these carriers engage in questionable behavior that would be detected through CAM and ARMIS reporting. Conversely, the Commission has rarely made any significant use of the CAM and ARMIS information it does collect on two percent companies.

In conclusion, H.R. 3850's proposed elimination of CAM and ARMIS reporting requirements, and separate affiliate requirements for two percent companies would not change the Commission's substantive prohibitions against cost misallocation, nor would it alter state and federal officials' authority to enforce those rules. Instead, it would allow regulators to move away from burdensome regulatory requirements and allow them the discretion to target their enforcement efforts whenever and however they chose. Ultimately, this would benefit consumers by allowing companies to redirect their resources to network investments and new competitive initiatives.

Thank you again for your interest in the issues raised by H.R. 3850. I hope the foregoing is responsive to the concerns you raised at the subcommittee's hearing. Please contact me if you have further questions or if you wish to discuss this letter in greater detail.

Very truly yours,

DAVID W. ZESIGER
Executive Director

cc: The Honorable Tom Bliley
The Honorable John D. Dingell
The Honorable W. J. ("Billy") Tauzin
The Honorable Edward J. Markey
The Honorable Barbara Cubin
The Honorable Bart Gordon
The Honorable Charles ("Chip") Pickering
The Honorable Tom Barrett

FEDERAL COMMUNICATIONS COMMISSION
September 14, 2000

The Honorable JOHN M. SHIMKUS
U.S. House of Representatives
513 Cannon House Office Building
Washington, D.C. 20515

DEAR CONGRESSMAN SHIMKUS: During the July 20, 2000 hearing on the Independent Telecommunications Consumer Enhancement Act of 2000, a question was raised concerning why the Commission had not addressed a 1998 waiver request from the Anchorage Telephone Utility (ATU) for pricing flexibility in the Anchorage market. In that petition, ATU requests a waiver of two sections of the Commission's rules to permit it to offer volume and term discounts for the local switching and transport interconnection charge. The appropriate degree of competitive response in the form of additional pricing flexibility is a complex and significant issue for the development of competition in the exchange and exchange access market. When ATU filed its petition, the Commission was considering broad pricing flexibility issues for price cap incumbent local exchange carriers (LECs), and no incumbent LEC was authorized to offer volume and term discounts on services for which ATU sought a waiver.

In August 1999, the Commission adopted rules setting pricing flexibility guidelines for price cap LECs that included volume and term discounts for local switching services upon a showing of a specified degree of competition in a given metropolitan statistical area. The Commission has not addressed volume and term discounts in connection with the transport interconnection charge.

In addition to the pricing flexibility proceeding, the Commission has addressed other major access pricing issues. Most significantly, the Commission adopted with minor changes a proposal from the Coalition for Affordable Local and Long-distance Service that involved a major restructuring of the access charges assessed by incumbent price cap LECs. This was a lengthy, complex, and resource intensive proceeding. The order adopting the revised rules was released on May 31, 2000.

In February 2000, ATU filed additional data showing the development of increased competition in the Anchorage market that addressed the competitive market conditions market in light of the requirements established for price cap LECs. The Commission staff has been analyzing the record in light of this updated data, and

I anticipate that the Common Carrier Bureau will make a recommendation to the Commission on ATU's waiver request by the end of this fiscal year.

Sincerely,

CAROL E. MATTEY
Deputy Chief, Common Carrier Bureau

cc: The Honorable W.J. "Billy" Tauzin